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No. 263] NEW DELHI, THURSDAY, NOVEMBER 11, 1954

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 18th October 1954

S.R.O. 3391.—Whereas the election of Shri Hari Shankar Prasad, as a member of the House of the People, from the Gorakhpur District (North) constituency of that House, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Shibban Lal Saksena, House No. 10, Mohalla Allahdadpur, Gorakhpur City;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission,

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, GORAKHPUR.

PRESENT: Sri. Brij Narain, *Chairman.*

Sri B. B. Lal & Sri Sukhdeo Prasad, *Members.*

ELECTION PETITION No. 224 OF 1952.

Shri Shibban Lal Saksena, *Petitioner.*

Versus

1. Sri Hari Shanker Prasad of Gorakhpur, Chairman, District Board, Gorakhpur.
2. Sri Iqbal Husain, Advocate, Gorakhpur.
3. Sri Krishna Murari Misra, C/o Uttar Pradesh Jan Sangh, A P Sen Road, Lucknow.
4. Sri Paras Nath Rai, resident of Halchal Sahitya Mandir, Hobart Row, Gorakhpur.

AND

5. Sri Thakur Dass Sahani of Sherwali Kothi, Gorakhpur, *Respondents.*

COUNSEL

For the Petitioner.—Sri Rajeshwari Prasad, Sri Janhvi Prasad, Sri Annapurna Prasad.

For the Respondent No. 1.—Sri Hari Har Prasad Dubey, Sri Guptar Misra, Sri Govind Misra.

For the Respondent No. 4.—Sri Govind Misra.

JUDGMENT

This is an Election Petition under Section 81 of the Representation of People Act, 1951, on behalf of Sri Shubban Lal Saksena, challenging the election of Sri Hari Shanker Prasad Gupta, respondent No. 1, to the House of People from Gorakhpur (North) Constituency held on 25th and 28th January, 1952, the result of which was declared on 20th February, 1952, after counting of votes which commenced on the 19th February, 1952, and it was found that the respondent No. 1 secured 67,341 votes, the petitioner secured 32,531 votes, the respondent No. 2 secured 7,839 votes and the respondent No. 3 secured 12,671 votes. The result of this election was published by the notification No. F-156/51-C-VI-LXIX, dated 26th February, 1952, in the Government of India Gazette (*Extraordinary*) on 26th February, 1952.

According to the Petitioner, Gorakhpur (North) Constituency was a single-member parliamentary constituency and it fell in two Tahsils of Gorakhpur District, viz. Pharenda and Mahrajgunj and it comprised within it three single-member and one double-member Uttar Pradesh State Legislative Assembly Constituencies and polling in the two of the three single-member State Legislative Constituencies and in the corresponding Pharenda Tahsil part of this Parliamentary Constituency was held simultaneously on the 25th January, 1952, while in the remaining one single-member and one double-member State Legislative Assembly Constituency and in the corresponding Mahrajgunj Tahsil part of the Parliamentary Constituency polling was held simultaneously on the 28th January, 1952. The total number of valid votes cast was 1,20,382. 306 votes were rejected and the total number of voters on the rolls of the Constituency of this Parliamentary Constituency was about 3,69,000.

The petitioner has alleged that the respondent No. 1 has been guilty of corrupt practices specified in Section 123 of the Representation of People Act, 1951, and so his election is void. The said corrupt practices *inter alia* comprised the obtaining or procuring by the said candidate or his agents assistance for the furtherance of the prospects of the candidate's election from persons serving under the Government of the State of Uttar Pradesh other than the giving of votes by such persons. Government employees, who were not authorised to take part in the elections, except to give their votes, were also alleged to have worked for the respondent No. 1, and hinderances were put in the way of the petitioner's voters casting their votes. The respondent No. 1, who was the Chairman of the District Board, Gorakhpur, and who was also the Chairman of the Committee, which appointed Secretaries of the Panchayat Adalat and Gaon Panchayats and who was also incharge of the Training Camp of Sarpanches, Panches and Secretaries of Panchayati Adalat held after the election, was in a position to secure most of the Sarpanches, Panches and Secretaries of the Adalati Panchayats, Presidents and Vice-Presidents of the Gaon Sabha and teachers of the Government Primary Schools to work for him as his canvassers in this election and quite a large number of them were appointed by the respondent No. 1 as his polling agents in this election. The Mukhias and branch post-masters were also to have canvassed for the respondent No. 1 in this election. The respondent No. 1 is further alleged to have over-staffed the schools within his constituency so as to enable the District Board School teachers and Government Primary School teachers to have free time for canvassing for the respondent No. 1 in this election. A large number of voters for the petitioner are stated to have been disallowed from casting their votes, and no polling agents of the Petitioner had been allowed to be present inside the polling station in the Constituency on the polling days. The petitioner submitted 519 letters of appointments in Form VI in accordance with Rule 12 of the Representation of People (Conduct of Election and Election Petition) Rules, 1951, for the polling scheduled to be held on 25th January, 1952, in that part of the Parliamentary Constituency which fell in the Pharenda Tahsil to the Assistant Returning Officer (The Returning Officer not being present) on the 22nd January, 1952, at 10 A.M. The Assistant Returning Officer is alleged to have illegally refused to accept the forms on the ground that they should have been submitted 72 hours before the time scheduled for the commencement of the polling on 25th January, 1952. The petitioner claims to have sent a telegram to the Election Commissioner on 23rd January, 1952, protesting against the alleged illegal and arbitrary rejection of his polling agents appointments forms. Similarly, the petitioner submitted 840 letters of appointment of polling agents for polling scheduled to be held on the 28th January, 1952, and the same were taken to the house of the Returning Officer, Sri C. B. Dube on 25th January, 1952, at 7-30 A.M., but it was stated that the Returning Officer was supervising election at Pharenda at that time, and so the forms were taken to the house of the Election Officer, Sri Chaturvedi, at 7-45 A.M., but he too was

away. Then the forms were submitted in the Election Office, when it opened at 10 A.M., but they were illegally rejected on the ground that they should have been submitted before 8 A.M. The Petitioner sent a telegram to the Chief Electoral Officer, Uttar Pradesh, protesting against the illegal and arbitrary rejection of his polling agents appointment forms. As a result of this wrongful and illegal rejection of the polling agents' appointment forms, the petitioner has alleged that not a single polling agent of his could be present at any of the 410 polling booths in 138 widely spread polling stations. The Petitioner has also alleged that his seals could not be put on the ballot boxes at the commencement of the polling and at the close of the polling, thereby making it possible for the ballot boxes to be tampered with during the period between the date of polling and the date of counting of votes, which period was extended from day to day from 4th February to 19th February, 1952, for this very purpose, according to the petitioner. The voters of the petitioner were made to sit out for long hours in the hot sun, thereby compelling them to return to their homes without casting their votes. A list of polling stations where this was done has been given in Schedule IV of the List appended to the Petition.

At many of the polling stations ballot papers for the House of People were not given at all to ignorant voters, who were told to go away after casting their votes to the Legislative Assembly, and, when they left the polling booths, their ballot papers for the House of People, according to the Petitioner, were issued and put into the ballot boxes of the respondent No. 1, either by the Presiding or Polling Officers themselves or through intelligent voter supporting the respondent No. 1. At most of the polling stations, the Presiding and Polling Officers refused to explain properly the manner of casting votes to female voters, and they were misguided by being told that they had merely to put their ballot papers on the ballot boxes of their choice, and subsequently, when they left the ballot papers lying on the ballot boxes of the Petitioner, these ballot papers were collected and put inside the boxes of the respondent No. 1. The ballot papers for the absentee voters were issued, according to the petitioner, and they were put into the boxes of the respondent No. 1 after the polling. According to the petitioner, no check was provided against putting of different symbols inside and outside the ballot boxes, and, at some of the polling stations before the polling commenced, while the petitioner's symbol of hut was pasted inside his ballot boxes, the symbol of the Congress candidate, the respondent No. 1, viz., "pair of bullocks" was pasted outside, while in the ballot boxes of the respondent No. 1 the symbols of pair of bullocks was pasted inside and the symbols of hut was pasted outside, but, at the conclusion of the polling and before the counting took place, the symbols pasted outside the ballot boxes of the petitioner and the respondent No. 1 were removed and replaced by the symbols same as inside the ballot boxes, and at many of the polling stations the Presiding and Polling Officers are alleged to have misguided the voters of the Petitioner by telling them that the petitioner was seeking election on the Congress ticket, and his symbol was a pair of bullocks. At most of the polling Stations, the ballot boxes, according to the Petitioner, were not properly closed and sealed by putting knot after drawing the thread tightly through the holes in the covering lid in such a manner that the ballot boxes could be opened without breaking the seals, thereby making it possible for the ballot boxes to be tampered with, so that ballot papers contained therein could be taken out and transferred to the ballot boxes of the respondent No. 1. The Petitioner discovered this at the time of counting of votes and he brought this matter to the notice of the Returning Officer, vide copy of the Returning Officer's Order, dated 20th February, 1952 (Schedule V of the List appended to the Petition). The ballot boxes used in this Constituency were very defective, according to the petitioner, and they could be easily tampered with, and the petitioner had protested in writing to the Election Commissioner on this score on October 27, 1951. According to the petitioner, the ballot boxes, after the conclusion of the polling, were not kept in any closed room for safe custody, but they were kept in open barracks in Police Lines, Gorakhpur, and, as the counting of votes was postponed day to day from 4th February, 1952, to 5th, 12th and 18th February, 1952, and had actually commenced on 19th February, 1952, the petitioner alleges that the ballot papers were tampered with and he was gravely prejudiced. The Presiding Officers, after the close of the polling, according to the petitioner, did not comply with the provisions of Rule 33 of the Representation of People (Conduct of Election and Election Petitions) Rules, 1951, relating to the Account of ballot papers to be prepared by the Presiding Officers, after the close of the polling, as no accounts were prepared by them in Form No. 10.

It has also been alleged by the petitioner that the accounts given in the Return of Election Expenses submitted by the respondent No. 1 are false and the expenditure incurred by him is much higher and he has concealed many

expenses, such as those incurred on the printing of voter cards for the polling days, supplying woollen blankets and uniform to his workers and those incurred on his polling agents on the day of polling. According to the petitioner, when it became known to the local authorities that the petitioner was going to file an election petition, they got alarmed and they began to put all sorts of obstructions in the way, and the different Returning Officers opened the seals of the boxes of ballot papers and checked their ballot papers in order to see that there was no difference in the number of ballot papers issued on different polling booths and the number found in the ballot box and those remained unused, without any authority from any competent court or Tribunal in direct breach of Rule 251 of the Representation of People (Conduct of Elections and Election Petitions) Rules, 1951. Lastly, it has been alleged that the respondent No. 1 was disqualified from being a candidate for the election to the House of People on the day he filed his Nomination Papers for the Gorakhpur District (North) Constituency, as he was the Chairman of the Gorakhpur District Board on that date, which is an office of profit in terms of the Constitution of India and the Representation of People Act, 1951.

The respondent No. 1 has denied the various allegations made by the petitioner in his Election Petition, and it has been contended by him that Sri Paras Nath Rai and Sri Thakur Dass Sahani, who were also duly nominated as candidates for the Gorakhpur (North) Constituency seat are necessary parties to this petition, and so the petition should fail on account of non-joinder of necessary parties. It has further been contended that the statement of facts given by the petitioner in his petition is not in accordance with Section 83 of the Representation of People Act, 1951. It has also been contended that the petition has not been presented within the prescribed period of limitation, and so it is liable to be dismissed. Neither the respondent No. 1 nor his agent according to the respondent No. 1, obtained or produced assistance in furtherance of the prospects of the election from persons serving under the Uttar Pradesh State Government, and no Secretary of the Panchayati Adalat or teacher of the District Board School or Government Primary School and no member of the staff of the District Board Gorakhpur ever worked or canvassed for the respondent No. 1 and no such person worked as a polling agent. According to the respondent No. 1, the Presidents and Vice-Presidents of the Panchayat and Gaon Sabhas are not Government servants, and so if some of them did work as polling agents for him, this fact would not vitiate the election, as the respondent No. 1 did not knowingly appoint any Sarpanch or Panch as his agents. The respondent No. 1 has denied having exercised undue influence on the voters or other functionaries as has been alleged in the petition. The allegations made in the petition are said to be very vague, as the petitioner has not given full particulars of the persons, who are alleged to have worked for the respondent No. 1, and so the respondent No. 1 is unable to identify them as the petitioner has not stated what work each one of them did in what capacity and at what place. The allegation that the respondent No. 1 over-staffed schools or he promoted such teachers as head-masters as had agreed to work for him in the general election, is incorrect according to the respondent No. 1. According to the respondent No. 1, the petitioner did not file his polling agents nomination forms in time and so they were rightly rejected. The ballot boxes are stated to have been duly sealed by the Presiding Officers and the date of counting of votes was not postponed with any particular purpose i.e. to prejudice the petitioner. It has been emphatically denied by the respondent No. 1 that any voters of the petitioner were not allowed to enter the booths to cast their votes. It has further been denied that the voting papers to the House of People were withheld at any polling station, and it is asserted that nobody ever said that the petitioner was a Congress candidate, or that the 'pair of bullocks' was his symbol. The ballot papers were kept under lock and sealed after the polling, and not in open barracks, and they were kept under close armed guards. The symbols were duly pasted on the ballot boxes, and according to the respondent No. 1 there was no shifting of symbols from one box to another as has been alleged by the petitioner. The ballot boxes used in the election are said not to be defective in any way, and the provisions of Rules 33 and 52 mentioned above are stated to have been fully complied with. The allegations of the petitioner against the integrity of the officers conducting the elections are stated to be entirely false and imaginary, and the return of election expenses submitted by the respondent No. 1 is stated to be correct. It has been asserted by the respondent No. 1 that the result of the election in this Constituency was not affected by any corrupt practice, nor was it at all affected by any non-compliance with the provisions of the Representation of People Act and Rules framed thereunder. According to the respondent No. 1, the petitioner was defeated on account of lack of support for him in the general public and not because of any irregularity or mal-practice as suggested by the petitioner. The real position according to the respondent No. 1 is that the imagination of the

voters had been caught by the idealogies of the Congress organization and by the personality of its leaders, so much so that in the Uttar Pradesh as a whole no candidate of the K.M.P.P. to which the petitioner belongs was returned to the House of People. According to the respondent No. 1 the petition is not duly verified and it is therefore defective. Lastly, it has been contended that even if in the opinion of this Tribunal some corrupt practice may have crept into the election affair, the prayer of the petitioner for setting aside the election cannot be allowed, because the respondent No. 1 is himself guilty of no such corrupt practice, and the corrupt practices, if any, were committed contrary to his orders and without his sanction and connivance, and these corrupt practices, if any, were of trivial nature and limited character which did not affect the result of the election, and the respondent No. 1 took all reasonable precautions and adopted all reasonable means for preventing commission of all corrupt and illegal practice at the election, and that in all respects the election was free from all illegal or corrupt practices on the part of the respondent No. 1 and his agents.

The remaining respondents have not contested the petition.

The following issues were framed on the pleadings of the parties:—

1. Is the petition bad for non-joinder of necessary parties?
2. Are the allegations regarding major and minor corrupt practices and illegal practices as well as other allegations contained in the petition vague and indefinite? If so, with what effect?
3. Whether the respondent No. 1 employed servants and employees of Government and persons serving under the State Government of Uttar Pradesh and the Government of India as his agents or canvassers?
4. Whether the petition and list of particulars are liable to be rejected for want of proper verification?
5. Whether the respondent No. 1 appointed employees of District Board as his election agents and canvassers? If so, its effect?
6. Whether Presidents, Vice-Presidents of Gram Sabhas and Sarpanches and Panches of Panchayati Adalat and employees of the District Board are persons serving under the State of Uttar Pradesh, within the meaning of the Representation of the People Act, 1951?
7. Whether the respondent No. 1 appointed Panches and Sarpanches as his agents? If so, its effect?
8. Whether the respondent No. 1 mis-used his authority as Chairman of the District Board, Gorakhpur, to further the prospects of his election and towards this end promoted such teachers and headmasters in July and August, 1951 as agreed to work for him and over-staffed the schools in his Constituency, so as to enable the teachers to have free time for canvassing? If so, its effect?
9. Whether any Secretary of Panchayati Adalat or any school teacher worked as canvasser and indulged in any sort of mal-practice as alleged by the Petitioner? If so, its effect?
10. Whether any voter for the Petition was not properly received, and was not allowed to cast his vote for the petitioner? If so, to what extent?
11. Whether the corrupt practices as alleged in Para. 3 of the List appended to the Petition (Part II), if any, have materially affected the result of the Election?
12. Whether there has been any non-compliance of the provisions of Representation of the People Act and Rules relating to the Election as alleged in para. 5 of the Lists appended to the Petition (Part II) and has it materially affected the result of the election?
13. Whether the provisions of Rules 33 and 52 of the Representation of People Act were not complied with? If so, its effect?
14. Are the accounts submitted by the respondent No. 1 false in so far as he has left out certain expenses specified in Para. 10 of the Petition (Part II)? If so, its effect?

15. Whether the respondent No. 1 was qualified for being a candidate for the election to the House of People on the day he filed his nomination paper as he was the Chairman of the Gorakhpur District Board on that day? If so, its effect on the election?
16. Did the Officers conducting the election show any partiality to the respondent No. 1 respecting the election? If so, its effect?
17. Were any voting papers with-held from the Petitioner's voters at the time of the election?
18. Did the Presiding and Polling Officers and the Polling Agents of the respondent tell the voters of the petitioner that the petitioner was seeking election on the Congress Ticket and his symbol was that of the "Pair of Bullocks"?
19. Whether the ballot boxes were kept in open barracks and not under lock and seals?
20. Whether any obstruction was put in the way of the Petitioner in the matter of election as alleged in Para. 5(iv)(b) and (c) of the Petition?
21. Whether any votes of the absentee voters were cast for the respondent No. 1? If so, its effect?
22. Whether the symbols were shifted from one box to another as alleged by the Petitioner?
23. Whether the ballot boxes were defective and were not properly sealed? If so, with what effect?
24. Whether the ballot boxes were tampered with? If so, its effect?
25. Were the ballot papers lying outside the ballot boxes put in the ballot boxes of the respondent No. 1? If so, its effect?
26. Whether the corrupt practices, if any, were committed contrary to the orders and without the sanction and connivance of the respondent No. 1?
27. Whether the corrupt practices, if any, were of trivial nature and limited character?
28. Is the Petition not within time and is it liable to be dismissed?
29. To what relief, if any, is the petitioner entitled?

FINDINGS

Issue No. 1.—Finding on this issue has already been given on 21st January, 1953, and Sri Paras Nath Rai and Sri Thakur Das Sahaney, who were also duly nominated candidates *vide* Exs. A.1, A.2, A.10 and A.11, have been added as respondents Nos. 4 and 5 in the present petition. For reasons given in the finding on this Issue, dated 21st January, 1953, we held that the present petition was not bad for non-joinder of necessary parties and it could not be deemed to be defective under section 82 of the Representation of the People Act. The finding, dated 21st January, 1953, will be incorporated in the present judgment. We now proceed to examine the implications of the amendment, dated 21st January, 1953.

The learned counsel for the respondent No. 1 has argued that, as, Sri Paras Nath Roy and Sri Thakur Das Sahaney have been impleaded as respondents on 21st January, 1953 long after the expiry of the period of limitation for filing the election petition, *i.e.*, on the 21st May, 1952, the joinder of these parties as respondents is legally defective and the present petition must be deemed time-barred. According to the respondent No. 1, the question whether the non-joinder of Paras Nath Roy and Thakur Das Sahaney was fatal to the present petition or not was left open and so it has been urged that it is not to be seen whether the present petition is liable to be dismissed on this very ground under Section 83 of the Representation of the People Act or not. There is no doubt that in Sri Charan Singh's case No. 287 of 1952, published in the Government of India Gazette, dated 20th December, 1952, Part II, Section 3, P. 1034, it was held that non-joinder of duly nominated candidates was fatal to an election petition. On behalf of the petitioner reliance has been placed on the ruling

reported in Gazette of India, Vol. 78, Part II, Section 3, dated 5th April, 1953, P. 1063, at p. 1072 (Sri Udai Nath Singh—Vs.—Sri Jagat Bahadur Singh and Others, in which reference to an earlier Patna Case (Manzoor Husain—Vs.—Ghulam Mohiuddin—Sen and Poddar's Election Cases, P. 746, has also been made). There is no doubt that different Election Tribunal have taken different views on this matter, but it has been clearly laid down by Hon'ble Justice Chagla, C. J. Bombay High Court, in Special Civil Application No. 201 of 1952 (Sita Ram Hira Chand Birla—Vs.—Rograj Singh Shanker Singh Parihar) decided on 19th December, 1952, that such non-joinder is not fatal and, if some of the duly nominated candidates are impleaded later on, there would be no legal flaw and the petition would not be liable to dismissal on this ground. The learned Advocate for the respondent No. 1 has urged that this Judgment is not binding on the Tribunal, because it was given from the point of view of giving a decision in a Writ, where the High Court merely looks to the question whether the Tribunal has failed to exercise its statutory duty or whether it has assumed jurisdiction when really it had none. In this case of Writ, the Bombay High Court did not decide the question whether the petition should fail or not, as the Writ had been filed during preliminary stages of the hearing of the Petition. It has further been urged that the words "at the Election" were wrongly interpreted to be meaning 'at the poll' and reliance has been placed in this connection on Forms No. 3, 6 and part V of the Representation of the People Act. A perusal of Form No. 3 framed under Rule 9(1) of the Representation of the People (Conduct of Election and Election Petitions) Rules, 1951, shows that in the Form of notice of withdrawal by a candidate it has been mentioned as follows:—

"I, of a candidate nominated at the *election in the above constituency do hereby give notice that I withdraw my candidature."

In Form No. 6, which is framed under Rule 11(a) it has been mentioned:—

"I, of a candidate at the election

*House of the People
Legislative Assembly
Legislative Council
Electoral College

from.....constituency to be held in19, hereby appoint.... of ... as my election agent from this date until the return and declaration respecting election expenses had been made by him."

Part V of the Representation of the People Act relates to conduct of elections and in this Part, Chapter I deals with nomination of candidates. Chapter II deals with candidates and their agents. Chapter III deals with the procedure of general election. Chapter IV deals with the polls, Chapter V with the counting of votes; Chapter VII with publication of election results and nominations and Chapter VIII with election expenses. It thus shows that a candidate at the election would mean a candidate, who files his nomination paper and, who survives the scrutiny, but later on withdraws from the election. This argument has been negatived by their Lordships of the Bombay High Court in the case referred to above and our own Hon'ble High Court has agreed with the Bombay High Court in 1953 A.L.J., p. 323 (Shri Sheo Kumar Pande—Vs. Sri V. G. Oak and Others), wherein it was held that the words 'at the election' have been loosely used in the rules and forms of the Representation of the People Act and the words 'candidate at the election' clearly signify a point of time when the poll is actually held. The matter has been set finally at rest now by the latest pronouncement of the Hon'ble Supreme Court in Jagan Nath—Vs.—Jaswant Singh and others, decided on 20th January, 1954, in which it was clearly held that the provisions of Section 32, Representation of the People Act are in terms similar to the provisions of Order 34, Rule 1, C.P.C. We think that the arguments advanced on behalf of the respondent No. 1 in this connection have no force in view of the rulings of the High Courts cited above and so we come to the conclusion that the petition cannot be dismissed because Sri Paras Nath Roy and Sri Thakur Das Sahaney were impleaded as respondents at a later stage. Issue is, therefore, decided against respondent No. 1.

Issue No. 28.—It has further been contended by the learned Advocate for the respondent No. 1 that, in any case, the present petition is time-barred for Sri Paras Nath Roy and Sri Thakur Das Sahaney were impleaded when the period of limitation for filing the election petition had already expired. Reliance has

been placed on A.I.R., 1950, Bombay, p. 130 (The Prince Line Ltd.—Vs.—The Trustees of the Port of Bombay) in order to show that, even though proper party was impleaded, but the plaint can be held to be time-barred at a later stage. In our opinion the facts of this case are totally different. In the present petition before us the petitioner has not claimed any relief against Sri Paras Nath Roy and Sri Thakur Das Sahaney and the relief which has claimed by the petitioner could properly be allowed even if no specific relief was granted against these new respondents. The relief, which has been claimed by the petitioner in this case, had been claimed within the statutory period of limitation as against the respondent No. 1 and so we think that the present petition cannot be deemed to be time-barred in any case. It was vaguely urged in para. 8 of the written statement that the petition had not been presented within time, but it has not been shown how the present petition could be deemed to have been filed beyond time as against the respondents Nos. 1 to 3. We therefore hold that the present petition is not time-barred and we decide this issue against the respondent No. 1.

Issue No. 4.—It has been contended in para 38 of the W. S of the respondent No. 1 that the petition is not verified and is therefore defective. The petition has been verified in the manner given below:—

"I solemnly affirm that the facts in paras. 1, 2, 5, 6 and 8 are true to the best of my knowledge, and the facts in the remaining paras. 3, 4, 6, 7, 9 to 12 are true to the best of my information and belief."

It has been contended that mere affirmation is no verification, nor is a mere declaration a verification, and as it has not been stated in the verification that the content of the plaint *were verified by the petitioner*, and no date or place of verification have been given in the alleged verification it should be inferred that the petition has not been duly verified according to law as required by Order VI Rule 15, C.P.C.

The schedules appended to the petition have also got similar note towards the end, and so it has been contended that these schedules are also not duly verified as required by the provisions of Representation of People Act, 1951.

Order VI Rule 15, C.P.C. lays down that verification of pleadings shall be made (a) by the party, or (b) one of the parties, or (c) by some other person proved to the satisfaction of the court to be acquainted with the facts of the case e.g., an agent, or manager or Gumashta, who has knowledge of the facts stated. The person verifying shall comply with the directions in sub-rule 2 i.e., he shall clearly specify by reference to the numbered paras. of the pleadings, what he verified of his own knowledge and what he verified upon information received and believed to be true. It has been laid down in I.L.R., Calcutta, p. 380, Ram Gopal *Versus* Dhirendra that omission to verify or defective verification can be remedied at a later stage and is mere irregularity within section 99 C.P.C., as not affecting the merits of the case, vide also Basdeo—*Versus*—Smidt, I.L.R., XXII, Allahabad, p. 55, in which it was held that, even absence of signature in the plaint was not fatal, and Wali Mohammad—*Versus*—Ishaq Ali, I.L.R., Allahabad, page 57 (F.B.). There is no doubt that under para. 3 of Rule 15 of Order VI, C.P.C., it has been laid down that the verification should be signed by the person making it and shall state the date on which and the place at which it was signed, but, as the respondent No. 1 did not rely on para. 3 of this rule, even during the course of arguments of the petitioner, we think this minor irregularity cannot be deemed to be sufficient for the rejection of the petition. The petitioner has duly signed the petition and the lists, and he has also duly verified them and he has clearly and fully complied with the provisions of paras. 1 and 2 of Rule 15, and so we are unable to hold at this late stage that the petition is liable to be thrown out simply because in the verification the date and place at which verification was made have not been given. The date has been given by the petitioner after he had signed the verification para. and only the place has been omitted. This omission cannot be deemed to be fatal in any manner, vide Srimati Shanta Devi Valdia—*Versus*—Sri Bashir Husain Zaidi and Others (U.P. Gazette Extraordinary, dated 12th November 1953, p. 4, para 9) and so we decide this issue also against the respondent No. 1.

Issue No 10.—It has been vaguely alleged in para. 5 of the Petition that a large number of voters for the petitioner were improperly received and were not allowed to cast their votes, and, even though 6 schedules were appended to the petition, no schedule of the petitioner's voters, who were not allowed to cast their votes, has been given. Schedule IV appended to the Petition merely gives the names of 65 polling stations and it has been stated there that at these polling stations the petitioner's voters were not allowed to enter the polling booths and were made to wait for hours in hot sun and were not given ballot papers for the House of People.

election, but, as not a single voter has been specifically named therein as having been refused a ballot paper, we think this schedule does not materially help the petitioner so far as the present controversy is concerned. Interrogatories were served on the Respondent No. 1 by the petitioner on the 11th March, 1953 but in these interrogatories also no voters had been specifically named, who might have been refused ballot papers, *vide* the reply to the interrogatories filed by the Respondent No. 1 on 30th March, 1953. Shri Shibban Lal Saksena petitioner, P.W. 20, has stated in his examination-in-chief that he was informed that ballot papers for Parliamentary Constituency have not been given to his voters at Gaunaria Babu Polling Station, and this idea was confirmed when at the time of inspection the petitioner found from the ballot paper account that 11 ballot papers less had been issued for the Parliamentary Constituency as compared to the Assembly Constituency, although the same persons were the voters for both the Constituencies. In the first place, the petitioner has not given the name of any voter, who might have been refused a ballot paper for Parliamentary Constituency, and he has failed to examine any voter to depose that he was not given a ballot paper for the Parliamentary Constituency even though he demanded it. Even if it be assumed for a moment that 11 ballot papers less had been issued in the Parliamentary Constituency, it cannot be inferred that 11 persons who cast their votes in the Assembly Constituency had also asked for ballot papers of the Parliamentary Constituency and it is just possible that they might have decided not to vote for any candidate in the Parliamentary Constituency. As such it cannot be held that the petitioner has proved in this case that any voter of his was refused ballot paper for the Parliamentary Constituency, or that he was in any way ill-treated or was made to sit for hours in hot sun by the polling officials during the course of polling for this Parliamentary Constituency. We, therefore, decide this Issue against the petitioner.

Issue No. 12.—It has been alleged in para. 5 (Part II) of the petition that the result of the election has been materially affected by the non-compliance of the provisions of the Representation of People Act and Rules relating to Elections. It has been mentioned in this para. that 519 letters of appointments in Form VI in accordance with Rule 12 of the Representation of People (Conduct of Elections and Election Petitions) Rules, 1951, for the polling scheduled to be held on the 25th January, 1952, in that part of the Constituency which fell in Pharenda Tehsil were presented to the Assistant Returning Officer (Returning Officer not being present) by Shri Kapildeo Pandey, P.W. 2, on 22nd January, 1952, at 10 A.M., but these forms were illegally rejected on the ground that they should have been submitted not only 3 days before the polling days, but also 72 hours before the time scheduled for the commencement of the polling on the 25th January, 1952, i.e., before 8 A.M. on 22nd January, 1952. Similarly, 840 letters of appointments of polling agents for polling scheduled to be held on 28th January, 1952, were taken to the house of the Returning Officer, Sri C. B. Dubey on 25th January, 1952, at 7-30 A.M. by Radhey Shiam, *vide* Ex. 19, but the Returning Officer was stated to have gone to Pharenda for supervising election work there, and so the forms were taken to the house of the Election Officer, Sri Chaturvedi at 7-45 A.M. but he too was away. The forms were then taken by Ram Lakhan, P.W. 18, and Amar Nath to the Election Office when it was open at 10 A.M., but they were not accepted on the plea that they should have been submitted before 8 A.M. *vide* Exs. A3 and Exs. 1 and 2. The petitioner sent a telegram to the Election Commission, on the 23rd January, 1952, *vide* the postal receipt, Ex. 24, and another telegram to the Chief Electoral Officer on 25th January, 1952, *vide* the postal receipt, Ex. 23 protesting the high handed and illegal refusal to accept the petitioner's polling agents appointments forms. It has further been alleged that on account of this wrongful rejection of the polling agents forms of the petitioner the seals could not be put on the ballot boxes at the commencement and close of the polling, thereby making it possible for the ballot boxes to be tampered with during the period i.e., date of polling and the date of counting of votes when the ballot boxes were not kept in any closed room for safe custody, but were kept only in open barracks in the Police Lines, Gorakhpur, which period was extended from day to day for this very purpose, i.e., from 4th February, 1952 to 5th, 12th and 18th February, 1952, *vide* Exs. 3 and 4 and the counting actually commenced on the 19th February, 1952, *vide* copies of orders dated 4th February, 1952 and 19th February, 1952 (Schedule VI of the Petition). According to the petitioner, the Presiding and Polling Officers at most of the polling station refused to explain properly the manner of casting votes to female voters, who were misguided by being told that they had merely to put their ballot papers on the ballot boxes of their choice, and subsequently when the voters left the ballot papers lying on the ballot boxes, the ballot papers were collected and were put inside the ballot boxes of the Respondent No. 1.

Another allegation made in this para. is that ballot papers for absentee voters were issued and put into the ballot boxes of the Respondent No. 1 at the close of the polling, and so no check was provided against by putting different symbols and outside the ballot boxes at some of the polling stations, while the petitioner's symbol or hut was pasted inside his ballot boxes, the symbol of 'pair of bullocks' of the Respondent No. 1 was pasted outside, and at the close of the polling and before the counting took place the symbols pasted outside the ballot boxes of the petitioner and the Respondent No. 1 were removed and replaced by the symbols same as inside the ballot boxes. The Presiding and Polling Officers are alleged to have misguided the voters of the petitioner by being told that the petitioner was seeking election on the Congress Ticket and his symbol was of 'pair of bullocks', and it has further been alleged that at most of the polling stations the ballot boxes were not properly closed and sealed by putting the knot after drawing the thread tightly through the holes in the covering lid in such a manner that the ballot boxes could be opened without breaking the seals, thereby making it possible for the ballot boxes to be tampered with so that ballot papers contained in the petitioner's ballot boxes could be taken out and transferred to the ballot boxes of the Respondent No. 1, *vide* the petitioner's application and the Returning Officer's order thereon, dated 22nd February, 1952 (Schedule V of the Petition). Sri Shubbhan Lal Saxena P.W. 20 has stated that his polling agent forms were illegally rejected with the result that his polling agents could not be present at the time when the actual polling started and no proper labels could be affixed and lacunas were deliberately left so that the ballot papers might be shifted from the ballot boxes of the petitioner to those of the Respondent No. 1 at later stages. Sri Shubbhan Lal Saxena was not personally present when these polling agent forms were not accepted, but Kapil Deo Pandey P.W. 2 and Ram Lakhan P.W. 18 have been examined in this connection. The evidence of Kapil Deo Pandey clearly shows that he went with 519 polling agent forms to the house of the Returning Officer at about 10 A.M. on 22nd January 1952, but the District Magistrate have gone to Bansgaon. It has been urged that the District Magistrate should have given information to the petitioner about his going away to Bansgaon, in connection with other important Government work. In our opinion this contention has no force, for if Kapil Deo Pandey went to the house of the District Magistrate at 10 A.M. and the polling agent forms should have been deposited by 8 A.M. no duty could possibly be cast on the District Magistrate to give information about his programme after 8 A.M. to the petitioner or any other candidate.

Ram Lakhan P.W. 18 has deposed that he, Amar Nath, Duryodhan and Radhey Shyam took 840 polling agent forms from Maharaigam to Gorakhpur on 25th January 1952 and they reached Sri Budha Ram's place at 7 or 7-15 A.M. The petitioner knew full well that his forms had been rejected on an earlier occasion and these forms were to be presented to the Returning Officer, but even then these forms were sent to Sri Budha Ram's place. Naturally Ram Lakhan P.W. 18 was directed to present these forms to the District Magistrate as the latter was the Returning Officer for the Parliamentary Constituency. Ram Lakhan goes on to say that when he reached the District Magistrate's house at 7-30 A.M. he came to know that the District Magistrate was not present there. Then this witness went to Sri Chaturvedi Election Officer at 7-45 A.M., but the latter was also not to be found at his residence. Finally Ram Lakhan went to the A.D.M. who also refused to accept the forms, presumably because he had no authority to accept them. Ram Lakhan then claims to have filed the application Ex. 19, but this application was given by Radhey Shyam who has not been produced in this case. It has been admitted by this witness in cross-examination that even though the telegram was sent to the Chief Electoral Officer, U.P. no mention was made about this application in that telegram. Ram Lakhan's statement should have been corroborated by Duryodhan and Radhey Shyam on this point but this has not been done. Sri C. B. Dube, Sri Chaturvedi and the A.D.M. have also not been examined, and in these circumstances it is very difficult to hold on the uncorroborated testimony of Ram Lakhan that these forms were duly presented to the District Magistrate before 8 A.M. on the 25th January 1952 and he illegally refused to accept them.

Rule 12 which provides for appointment of polling agents runs as follows.—

- (1) At an election at which a polling is to be taken and the method of voting by ballot boxes is to be followed, each validly nominated candidate or his election agent may at least 3 days before the commencement of the poll appointment under section 46 one agent and 2 relief agents to act as polling agents of such candidate at each polling station, or where a polling station has more than one polling booth, at each such

polling booth, or at the place fixed under sub-section (1) of Section 29 for the poll, as the case may be, and such appointments shall be made by a letter in writing in duplicate in Form VI signed by the candidate or his election agent.

- (2) As soon as may be after the appointment of each polling agent of a candidate, and in any case at least 3 days before the commencement of the poll, the candidate or his election agent shall give notice of the appointment to the Returning Officer by forwarding to such officer the letter of appointment referred to in sub-rule (1)
- (3) The candidate or his election agent shall also deliver the duplicate copy of the letter of appointment to the polling agent who shall on the date fixed for the poll send the copy to, and sign the declaration contained therein before the presiding Officer of the polling station, or the Returning Officer presiding over the place fixed under sub-section (1) of Section 29 for the poll, where such polling agent appointed for duty, and the presiding Officer or the Returning Officer, as the case may be, shall thereafter retain in his custody and no polling agent shall be allowed to perform any duty at the polling station or at the place fixed for the poll, unless he has complied with the provisions of this sub-rule.

It is clear from the above-quoted rule that 3 clear days or 72 hours' time must be given to the Returning Officer to enable him to send the Form No. VI to the Presiding Officer so that the signatures on the declaration might be made by the polling agent in the presence of the Presiding Officer, and if this time is curtailed by the candidate or his election agent serious administrative difficulties are bound to occur. In the present case the petitioner's agents presented the forms before the Returning officer or the Assistant Returning Officer after 8 A.M. and so clear 72 hours' time was not left for them to send the Form No. VI to the respective Presiding Officers, and so there was sufficient justification for refusing these forms by the officers concerned.

It has been argued that as it was an uphill task to conduct the election campaign in this Parliamentary Constituency and even the Respondent No. 1 had signed about 4,000 polling agent forms for 410 polling booths in 138 polling stations, and so the slight delay on the part of the petitioner should have been condoned. We think that there is no force in this contention of the petitioner, and as Rule 12 is mandatory we hold that the petitioner's polling agents forms were not illegally rejected in this case. As there is no reliable evidence on the record to prove that the presiding and polling officers in any way misguded the petitioner's voters or that they put different symbol inside and outside the ballot boxes and later on changed them, or that the ballot papers for absentee voters were issued and put into the ballot boxes of the Respondent No. 1 at the close of the poll, or that the presiding and polling officers failed to explain properly the manner of casting votes to female voters and the latter were misguded, we think that the allegations made in para. 5 of the list appended to the petition (Part II) have not been substantiated in this case and any alleged non-compliance of the provisions of the Representation of People Act and Rules relating to the Elections has not materially affected the result of the election. We, therefore, decide this issue against the petitioner.

Issue No. 16—We have already shown above that the petitioner has not been able to give specific instances of the cases in which any of his voters had been misguded by the presiding or polling officers, and it has further not been proved that the presiding and polling officers changed the symbol of the ballot boxes or were in any other manner unfair to the petitioner. The allegations regarding partiality of the presiding and polling officers towards the Respondent No. 1 have not been established in this case as most of the witnesses examined by the petitioner have not stated anything on this point. Even Sri Shibban Lal Saxena drew an inference on this point when he noticed at the time of counting of votes that more than half the ballot boxes could be opened without breaking the seals. It has further been vaguely alleged that the ballot boxes containing ballot papers when they had come from the polling stations were kept in the verandahs of the Police Lines, but this fact will not be itself sufficient to establish that the authorities were partial to the Respondent No. 1 as the petitioner himself has admitted that armed sentries were posted to guard these ballot boxes and so it was not possible to tamper with these ballot boxes. The petitioner examined in this case Mirtinje Nath, Kapil Deo Pandey, Duryodhan Prasad, Gogai Ram, Khilari Prasad, Madan Pandey, Hansraj Singh, Bhagwati Prasad, Mahatam Singh, Bandhu Pathak, Oudh Behari Saran,

Ramanuj Pandey, Sudaman Prasad, Ram Dayal, Gauri Shanker, Tameshwar, Ram Chand Prasad, Ram Lakhan, Pryag, Hanuman Prasad, Ramai Prasad, Satranji Prasad, Hosla Prasad, Manohar, Harihar, Manni Prasad, Ramapat Prasad Twar, Salamat Ullah, Puranmashi, Ramchander Prasad, Sajid Ali, Brij Bhan Sharma, Chandrika Prasad, Mangal, Kumal Mani, Hari Prasad Pandey, Ram Prasad, Madan Mohan Verma, Jata Shanker, Basdeo, Vidya Charan, Nand Kumar Lal, Girish Chander, Sarju Dass and Jagar Nath witnesses, but these witnesses have not made any clear statement or allegation to the effect that the presiding or polling officers had at any particular polling station shown partiality towards Respondent No. 1 during the course of polling or even subsequently. The Respondent No. 1 has denied these allegations, and so it must be inferred in the absence of cogent evidence that the petitioner has failed to establish that the officers conducting the election were guilty of partiality towards Respondent No. 1. We, therefore, decide this issue against the petitioner.

Issue No. 17.—The petitioner's witnesses named above have not been able to establish that any voting papers were withheld from the petitioner's voters at the time of actual polling at any polling station. No specific instances were given in the petition in which voting papers might have been alleged to have been withheld, and so we decide this issue also against the petitioner.

Issue No. 18.—Even Sri Shibban Lal Saxena P.W. 20 has not been able to give any instances in which any presiding or polling officer or polling agent of the Respondent No. 1 might have told the voters of the petitioner that the latter was seeking election on the Congress Ticket and his symbol was that of 'pair of bullocks'. The witnesses produced by the petitioner have also not given any specific instances in which any voter of the petitioner might have thus misguided, and so this issue must also be decided against the petitioner for want of evidence. We accordingly decide this issue against the petitioner.

Issue No. 19.—We have already referred to the statement of Sri Shibban Lal Saxena, who had clearly admitted in cross-examination that the ballot boxes were kept in the barracks, but armed sentries had been posted to guard them, and in the absence of any evidence to show that these boxes were tampered with after the conclusion of the polling and before the counting of votes it must be held that the boxes remained with seals intact in the barracks and the allegation that ballot papers from the petitioner's boxes were transferred to those of the Respondent No. 1 during this interval cannot be accepted as correct. The mere fact that counting of votes had to be postponed on four occasions due to unavoidable administrative reasons will also not in any way go to prove the allegations of the petitioner on this score. We, therefore, decide this Issue against the Petitioner.

Issue No. 20.—It has been alleged by the petitioner that the voters of the Respondent No. 1 were the only persons, who were allowed to enter the polling booth to cast their votes and the voters of the petitioner were not allowed to cast their votes and they were made to sit in hot sun thereby compelling them to return to their home without casting their votes. It has further been urged that ballot papers for the House of People were not given at all to some of the voters of the petitioner, who contended himself by merely giving a List of some of the polling stations in Schedule IV regarding this point and no single voters's name was given, who might have been to stay in hot sun for hours or to whom ballot paper for the House of People might have been refused. The witnesses for the petitioner have also not given any specific detail on this point, and so we decide this Issue also against the petitioner.

Issue No. 21.—The petitioner has not produced any cogent evidence to show that any votes of absentee voters were cast for the Respondent No. 1 during this election and no list of such voters has been given in the Petition. As such this Issue also must be decided against the petitioner, and we decide it accordingly.

Issues Nos. 22, 24 and 25.—It has been vaguely stated by the petitioner Sri Shibban Lal Saxena, that he was informed that ballot papers for Parliamentary Constituencies have not been given to his voters at Gaunariababu Polling Station, but the persons, who gave this information, have been withheld. There is no reliable evidence on the record to show that the symbols were actually shifted from one box to another, or that the ballot boxes were actually tampered with when they kept after the actual poll and before the counting of votes in the barracks of the Police Lines. We have already referred to the admissions of the petitioner that the armed sentries had been posted to guard these boxes and there is no reasons to hold that these boxes were tampered with or that the symbols were in any way changed and ballot papers from the ballot boxes of the petitioner were put into

the ballot boxes of the Respondent No. 1. There is further no evidence to show that the ballot papers lying outside the ballot boxes were put in by the presiding or polling officers inside the ballot boxes of the Respondent No. 1 on the polling day. We, therefore, decide all these issues against the petitioner.

Issue No. 2.—It has been contended in para. 7 of the written-statement that the statement of facts given by the petitioner is not in accordance with the provisions of S. 83 of the Representation of the People Act, 1951, and so the petition is liable to be dismissed.

The petitioner has mentioned in para. 3 of the Petition that corrupt practices specified under Section 123 of the Representation of the People Act, 1951, have been committed by the Respondent No. 1 and so his election is void. It has further been mentioned in this para. that the petitioner craves leave to add to these particulars at a later date, if and when he has examined all the election papers. In sub-clause (1) of this provision it has been stated that most of Sarpanches, Panches and Secretaries of Panchayati Adalats and Presidents and Vice-Presidents of Gaon Panchayats and teachers of Government Primary Schools, who are all Government servants, as also teachers of District Board Primary and Junior High School and other District Board staff were made by the Respondent No. 1 to work as his canvassers and quite a large number of them worked as his polling agents and their list was given in Schedule I in which the names and addresses of 168 persons serving under the State Government, who worked as active canvassers of Respondent No. 1 have been mentioned and in List (B) of Schedule I the names of 36 Presidents and Vice-Presidents of Gaon Sabhas have been given, who were alleged to have acted as polling agents of the Respondent No. 1. The Respondent No. 1 as Chairman of the Committee which appointed the Secretaries of the Panchayati Adalats and Gaon Panches is alleged to have received help from a very large number of these officials, who worked as polling clerks and who, according to the petitioner, indulged in all sorts of mal-practices to help the Respondent No. 1 and their list has been given in Schedule II of the Petition in which 129 polling stations have been 36 mentioned where such clerks were stated to have indulged in corrupt practices in order to help the Respondent No. 1 in the election.

It has been contended by the learned counsel for the Respondent No. 1 that the allegations made and referred to above are very vague and so the petition should be dismissed on this ground. According to the arguments advanced on behalf of the Respondent No. 1, the petitioner should have clearly mentioned with reference to each individual mentioned in Schedule I the particular corrupt or illegal practice committed by him and full details of such practice should have been given and also the date and place of the commission of each such practice. The petitioner has stated in the petition that the persons named in Schedule I worked as the canvassers of the Respondent No. 1 and quite a large number of them were appointed as his polling agents also. So far as the working as polling agents is concerned, the dates on which these people worked were fully ascertained and the Respondent No. 1 could have no difficulty in making enquiries as the names of the polling stations have been given in the Schedule I and the date of polling was certainly known to him. There is no doubt that the petitioner has not given with reference to each of the persons mentioned in Schedule I the exact place, time and date and the persons with whom he canvassed for the Respondent No. 1, but we think that the petitioner could not give such details in the petition and the details given by him are quite sufficient to enable the respondent to make enquiries and to effectively rebut the petitioner's case at the time of the recording of evidence.

Article 329(b) of the Constitution says:—

“No election to either House of Parliament or to either House of the Legislature of a State shall be called in question except by an Election Petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature”

Section 80 of the Representation of the People Act, 1951, also lays down that no election shall be called in question except by an election petition presented in accordance with the provisions of this Part.

Section 83 of the Act provides that an election petition shall contain a concise statement of the material facts on which the petitioner relies and shall be signed by the petitioner and verified in the manner laid down in the Civil Procedure Code, 1908 (Act V of 1908) for the verification of pleadings.

It has further been provided in sub-section (2) that the petition shall be accompanied by a List signed and verified in like manner setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice. It becomes clear from sub-section (2) of Section 83 of the Representation of the People Act that the law contemplates that the petitioner should give a list duly signed and verified setting forth all particulars of any corrupt or illegal practice including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice and so it is not mandatory on the petitioner to give all these details with perfect precision in the petition. The petitioner has given the names of all the persons who were alleged to have canvassed for the respondent No. 1 during election time and their office as well as the polling stations have also been given in most cases. The petitioner had got no opportunity of looking to the election papers upto the time when he filed his petition and so he could not be expected to give any further details and he must be deemed to have given as full a statement as possible within the meaning of Sec 83 (2) of the Representation of the People Act, 1951.

In *Abdul Rauf Vs. Hon'ble Pandit Govind Ballabh Pant* reported in Government of India Gazette, Extraordinary, Part II, S. 3, P. 211, dated 13th August 1953, p. 2695, it has been laid down at P. 2703 that the date and place of the commission of each corrupt practices must be stated if the requirements of Section 83(2) are to be complied with. But in the present case the petitioner has clearly mentioned in Schedule I (B) the names of 36 persons, who acted as polling agents for the respondent No. 1 on the polling day and regarding the names mentioned in List A of Schedule I it has been mentioned that they acted as canvassers and their names, offices and residences of all these persons have been given and so it is clear that the petitioner signified the areas within which these persons canvassed for the respondent No. 1. These Lists were amended during the course of the hearing of this petition, as the petitioner came to know more facts after inspection of the election records and the petitioner was then able to verify these lists partly from his own knowledge and partly upon information received and believed to be true, although formerly the petitioner could not verify most of the facts from his personal knowledge and, after inspection of the records, he could locate particular persons easily as having worked at particular places during election time.

In *Sri Ram Vs. Mohammad Taqi Hadi*, reported in Government of India Gazette, Extraordinary, Part II, S. 3, No. 233, dated September 3, 1953, P. 2909 at P. 2936, it was held that the particulars given in the petition were wanting in full particulars as to time and place of payments and also the name or names of persons making payments and also the names of payees were not given nor was it shown as to whether the payment was made in cash or by cheque in one or more instalments and so on, and, even though the Tribunal was of opinion that the election petition was somewhat defective for not setting forth in the petition and also in the list full particulars of corrupt practices, it was held that the petition was not defective to such an extent as should be dismissed *in toto*. In the present case also the petitioner has been allowed to amend the lists and now we think the details given in the list were quite sufficient to enable the respondent No. 1 to make enquiries regarding each and every individual, whose names and particulars have been given in the lists filed by the petitioner.

It has further been argued on behalf of the respondent No. 1 that amendment, which widens the scope of enquiry, should not be allowed and the instances given by the petitioner should show in detail *mens rea* on the part of the respondent No. 1 and also the details should clearly show that the respondent knowingly allowed the persons, who committed corrupt practice to indulge in them. This argument was considered in detail by the Tribunal and amendments were allowed during the course of the hearing, as the proposed amendments do not widen the scope of enquiry in any manner—*Vide Dr. K. N. Garola Vs. Sri Ganga Dhar Mathani & Others*, reported in the Gazette of India Extraordinary, Part II, S. 3, P. 240, dated September 25, 1953, P. 2985 at P. 3011, where it has been laid down that the amendment of the petition should normally be allowed, but where the amendment sought for does not change the nature of the case nor does it widen the scope of the inquiry, the amendments may be allowed, if made in good faith or if the case of the parties is not prejudiced.

There is no doubt that the more stringent view was taken in *M. C. Lingegowdce Vs. M. K. Shivanan Jappa* reported in Gazette of India, Extraordinary, Part II, S. 3 No. 169, dated 29th June, 1953, P. 2170, at P. 2189, and also in *Sri*

Ram Chander Chaudhri Vs. Sri Sada Siva Tripathi and others, reported in the Government of India Gazette, Extraordinary, Part II, S. 3, No. 123, dated 19th May, 1953, P. 1623 at P. 1628. But we think that, as amendment of the Lists have been allowed later on, the petition should not be dismissed even though fullest details of corrupt practices were not given in the petition from the very beginning. We have already mentioned above that sufficient details have been given and the respondent No. 1 could very easily have ascertained about each and every person mentioned in Schedule I and he could affectively rebut the petitioner's case during the course of evidence and his case has not been prejudiced in any way owing to amendments made in the Schedule or owing to alleged insufficiency of details, *vide* Sri Bhola Nath Vs. Sri Krishna Chander Gupta, reported in Gazette of India, Extraordinary, Part II, S. 3, No. 152, dated 30th April, 1953, P. 1497 at P. 1512, in which it was held that the petition was not liable to be rejected for non-compliance with the provisions of S. 83 (2) and S. 117 of the Representation of the People Act, even though the allegations of corrupt and illegal practices in paragraphs 27 to 36 were vague and indefinite, but only those allegations which suffered from want of particular were not entertained.

The learned Advocate for the petitioner has urged that it has been clearly mentioned in the petition regarding each polling agent having worked at a particular polling station on particular dates and, as canvassing is done after the nomination and before actual polling, the period of canvassing can also be deemed to be reasonably specified. But dates of canvassing cannot be easily given as canvassing goes on from day to day and so this matter must be deemed to be a matter of evidence and not of pleadings. In our opinion, the petition cannot be dismissed on account of alleged vagueness, and, if after consideration of the evidence, it is found that any particular instance is not proved, it will have to be discarded. We, therefore, hold that the petition is not liable to be rejected and the allegations regarding major and minor corrupt practice and illegal practices made in the petition are sufficiently clear. We decide this Issue accordingly against the respondent No. 1.

Issue No. 3.—As has already been mentioned above, the petitioner had alleged in the petition that 168 persons mentioned in Schedule I(A) serving under the State Government actively canvassed for the respondent No. 1 during the last general elections and some of them were appointed his polling agents also and in List B of Schedule I, 36 Presidents and Vice-Presidents of Gaon Sabhas have been alleged to have worked as polling agents for the respondent No. 1 during the last general election. According to the petitioner Sarpanches, Panches, Presidents of Gaon Sabhas, Branch Post-masters, Mukhias, District Board employees, pcons, Patwaris, Inspectors Panchayati Adalats, Secretaries, Panchayats, Vice-Presidents of Gaon Sabha canvassed for the respondent No. 1 and some of these people worked as his polling agents also in furtherance of the prospects of the respondent No. 1's election.

Sri Shibban Lal Saksena, Petitioner (P.W. 20) has stated that the respondent No. 1 appointed more than 600 persons as polling agents. Out of these 175 persons were serving under the State Government; and, out of these 175 persons, 24 are Mukhias, 3 are Sarpanches, about 18 Panches, about 50 Sabhapathis, 40 Up-sabhapathis, 4 Branch Post-masters, 3 Patwaris, 3 Cane Development employees and 2 P.R.D. Group Leaders. He has further stated that all the 204 persons mentioned by him in Schedule I worked as canvassers of the respondent No. 1 and, out of these, 30 worked as his polling agents. The petitioner has stated that Sri Krishna Das Mukhia, Patrengwa and Sabhapati of Patrengwa actually worked as polling Agent of the respondent No. 1 on the polling day and Sri Krishna Das has been mentioned at No. 33(B) in Schedule I, Mangal Das Mukhia and Sabhapati Jarrar worked at Raj Mandil polling Station as polling Agent of the respondent No. 1. Mangal Das has been mentioned in List A of Schedule I of the Petition at No. 152. The petitioner has filed copies of polling agents form of Sri Kishen Dass, *vide* Exs. 17 and 18 and also of Mangal Das, *Vide* Ex. 15 and these documents show that Sri Krishna Das signed the polling agent's form (Form No. 6) at both the places, i.e., before the candidate as well as before the Presiding Officer on the polling day and Mangal Das also signed the polling agent's form before the respondent No. 1. Regarding Sri Krishna Dass Mukhia, the petitioner's statement has been corroborated by Ram Chander Prasad (P.W. 17), who has deposed that Sri Kishen Das is the Sabhapati and Mukhia of Patrengwa and Ram Chander Prasad duly identified the signatures of Sri Krishna Das on the polling agent's forms; Exs. 17 and 18. Ram Chander Prasad has also proved the polling Agent's form Ex. 15 and he has stated on oath that he had seen Mangal Das Mukhia actually canvassing for the respondent No. 1 at Rajmandil polling station on the polling day. Sri Hausla Pathik (P.W. 24) has

deposed that he saw Sri Kishen Das Sabhapati and Mukhia of Patrengwa working as polling agent of the respondent No. 1. Sri Grish Chand, Registrar-Qanungo, Maharajgunj, (P.W. 45) has deposed that Sri Kishen Das is entered in the register of Mukhias as Mukhia of Patrengwa and Sri Kishen Das was appointed Mukhia on 10th October 1945 and since then he has continued in this office. Sri Ram Chander Prasad Advocate (P.W. 32) who worked as polling agent of Sri Thakur Das Sahney, Jana Sangh candidate, also saw Sri Kishen Das Mukhia and Gaon Sabhapati actually working as polling agent for the respondent No. 1 on the polling day. Sri Mathura Prasad, District Panchayat Officer, Gorakhpur (P.W. 38) produced the authorised official list of Sarpanches of Panchayati adalats of the District and this list fully establishes that Sri Kishen Das Mukhia and President, Gaon Sabha, Patrengwa is entered at Serial No. 22. Interrogatories were served on the respondent No. 1 in this case and it was clearly put to him whether Sri Kishen Das mentioned at No. 196 worked as his polling agent or not. But in Para 11 of the replies the respondent No. 1 stated that he could not say whether Sri Kishen Das mentioned at No. 196 worked as his polling agent or not. We think that the respondent No. 1 should have made a categorical statement on the question whether Sri Kishen Mukhia and Gram Sabhapati worked as his polling agent or not and his failure to answer this question categorically shows that he wanted to avoid giving information on the most crucial question. The respondent No. 1 summoned Sri Kishen Das, *vide* No. 113 of his list of witnesses dated 27th July, 1953 and at No. 6 of the list dated 3rd August, 1953, but this witness was not examined before the Tribunal.

Sri Hari Shankar Prasad Gupta, respondent No. 1, has tried to show that he had issued instructions to his workers that no Government Servants or Village Officer should be allowed to work for him in the election and whenever he handed over polling agents' form to any particular worker he made it clear to him that no Government Servant or any Village Officer or any undesirable person should be appointed as polling agent. He has further deposed that as the work was huge he could not appoint all the polling agents himself and so he had signed all the polling agents blank forms and had handed over some of the forms to his workers who got them filled and they were returned to him, and finally these forms were deposited with the Returning Officer. The respondent No. 1 in order to shirk responsibility tried to show that when these forms reached his office after being filled up he did not scrutinize them even though his office was located in his residential house.

The statement of the respondent No. 1 further shows that he signed about 4000 polling agent's forms and entries in only 5 or 10 polling agents forms had been filled up before he signed all these forms and the rest of the forms were blank when the respondent No. 1 signed them. Thus the respondent No. 1 has tried to show that he had delegated the function appointing polling agents to his workers. Even in his examination-in-chief he has stated that he did not appoint any Gram Sabhapati or Upsabhapati, Sarpanch, Panch, Patwari, Mukhia, Constable, Branch Postmaster or any other village Officer, or Government Employee working in the State of Uttar Pradesh, as his polling agent or canvassing agent during the last General Elections *knowingly*. No question was put to the respondent No. 1 in examination-in-chief specifically whether Sri Kishen Das Mukhia worked as the polling agent for him or not and so the oral and documentary evidence produced by the petitioner in connection with Sri Kishen Das Mukhia goes un rebutted.

The evidence on this record thus fully proves in our opinion that Sri Kishen Das was the Mukhia and President, Gram Sabha, Patrengwa and he was appointed polling agent by the respondent No. 1 and he actually worked as polling agent after signing the polling agent's form once again in the presence of the Presiding Officer and thus he was seen by the petitioner's witnesses named above working as polling agent for the respondent No. 1 on the polling day. As Sri Kishen Das signed the polling agent's forms, Exs. 17 and 18 before the respondent No. 1 it can be safely inferred that the respondent knew full well that Sri Kishen Das did exercise his influence as a Mukhia and as Gram Sabhapati, Patrengwa in furtherance of the prospects of the election of the respondent No. 1.

The petitioner has deposed that Mangal Das Mukhia and Sabhapati Jarrar was also seen working as polling agent for the respondent No. 1 at Rajmandil polling station and the polling agent's form Ex. 15 has been produced and proved by Ram Chander Prasad (P.W. 17) in this connection. Puranmashi (P.W. 31) actually saw Mangal Das Mukhia working as polling agent of the respondent No. 1 on the polling day. Sri Grish Chander, Registrar Qanungo (P.W. 45) has proved from his register that Mangal Das is the Mukhia of Jarrar & he was appointed as such on the 15th December 1947. Sri Duryodhan Prasad (P.W. 3) actually saw Mangal Das Sabhapati and Mukhia of Jarrar canvassing for the

respondent No. 1 during this election period. The respondent No. 1 examined Mangal Das who has admitted before this Tribunal that he is the Mukhia of Jarrar and also the Gram Sabhapati but he tried to show that he did not work as polling agent for the respondent No. 1 on the polling day because he had received instructions from the Panchayat Authorities not to take part in the general elections only 10 or 15 days before the polling day and even before receiving these orders he never accompanied any candidate for canvassing in his favour. It appears from the statement of this witness in cross-examination that the respondent No. 1 himself obtained his signatures on the polling agent's form Ex. 15 though he was not prepared to work for the respondent No. 1. The respondent No. 1 is alleged to have got the signatures of this witness on the polling agent's form Ex. 15 by force and under undue pressure. The respondent No. 1 on the other hand says that he had given blank forms to his workers and the latter got the signatures of polling agents on these forms. Mangal Das has later on admitted that he was at his house and in the evening he had gone to cast his vote and he remained at his door throughout the day on which polling was held. It is very significant that even though the respondent No. 1 got the signatures of this witness on the polling agent's form, Ex. 15, by force, this witness never told the respondent No. 1 that he would not work for him as polling agent. All these facts go to show that the case of the respondent No. 1 with regard to Mangal Das Mukhia and President Gaon Sabha, Jarrar, is not correct and the evidence of the petitioner's witnesses to the effect that this witness actually worked as a polling agent of the respondent No. 1 on the polling day appears to be correct. We, therefore, come to the conclusion that the petitioner has proved in this case that Mangal Das Mukhia and Sabhapati Jarrar worked as polling agent of the respondent No. 1 within the latter's knowledge in order to promote the chances of the respondent No. 1 in the election.

The Petitioner has tried to prove that Bhagwat Das, Bhagwati Das, Tirath Raj, Surajman, Usman, Gauri Shanker, Goli Rai, Sadhu Saran, Parmeshwar and Ishwar Saran Mukhias also worked for the respondent No. 1 in the last general election but as most of these persons were not named in the list filed with the petition as Mukhia we think their cases cannot be considered.

The respondent has examined Sri Bahadur Singh Maghaiya (R. W. 1), Sri Asalat Baksh (R.W. 10), Kedar Nath Pande (R.W. 11), Bhagwan (R.W. 12), Ram Agyan (R.W. 15), Tirjugi Narain (R.W. 16), Sita Ram (R.W. 17), Raj Kishore (R.W. 19), Sheo Japat Singh (R.W. 20), Rajwant Prasad Sukul (R.W. 21), Goli Rai (R.W. 23), Damri Singh (R.W. 26), Ali Hasan Khan (R.W. 27), Ram Subhag Pathak (R.W. 28), Sant Mani (R.W. 31), Sri Bishunath Parsad Tirpathi (R.W. 33), Chunmun Upadhya (R.W. 34), Bishunath (R.W. 37), Jai Karan (R.W. 47), Sukhdeo Prasad (R.W. 52), Sri Ram Autar Prasad (R.W. 55), Sri Moti Prasad (R.W. 69) and Sri Thakur Prasad (R.W. 70) have very vaguely stated that no Sarpanch, Panch, President Gram Sabha, Vice-President Gram Sabha, Mukhia, Patwari, Branch Postmaster, or any other Government servant employed in the Uttar Pradesh State worked for the respondent No. 1 during the last general election. But these vague statements are practically of no use when the petitioner had given specific instances in his petition and the respondent No. 1 did not care to specifically contradict this part of the petitioner's case even in his statement on oath. We hold therefore that the petitioner has proved in this case that Sri Kishen Das and Mangal Das Mukhias and Presidents Gaon Sabhas worked as polling agents and as canvassers for the respondent No. 1 within the latter's knowledge in order to further the prospects of the respondent No. 1.

Regarding Sarpanches of Panchayati Adalats the petitioner has stated that he had seen Ram Avadh Das Sarpanch and President Gaon Sabha Chaumukha working as polling agent of the respondent No. 1 on the polling day and he has also stated that Ram Ugrah Das *alias* Ram Ugrah Singh Sarpanch of Panchayati Adalat Munderi was also seen by him working as polling agent of the respondent No. 1 at Bandi polling station.

Ram Avadh Das was mentioned at No. 128 in list A of Schedule I of the petition and the respondent No. 1 in his written statement contended that this Ram Avadh Das was neither a Government servant nor did he canvass for respondent No. 1. It was however admitted in the written statement that Ram Avadh Das was appointed as a polling agent but he did not act as a polling agent. Regarding Ram Ugrah Singh who was mentioned at No. 158 of List A of Schedule I the respondent No. 1 merely stated that he knew nothing about this person. The polling agent's forms regarding Ram Avadh Das and Ram Ugrah Singh have been produced by the petitioner, *vide* Exs. 10 and 11 and 8 and 9. The evidence of Sri Mathura Prasad, District Panchayat Officer, Gorakhpur (P.W. 38) who produced the list of Sarpanches shows that Sri Ram Avadh Das

is the Sarpanch Panchayati Adalat Chaumukha and he is entered at serial No. 39 in the register while Sri Ram Ugrah Singh Sarpanch is entered at Serial No. 15 and so it is fully established that Ram Avadh Das and Ram Ugrah Singh were Sarpanches of Panchayati Adalats exercising judicial functions (which form part of sovereign functions of the State) at the time when this election took place. The polling agent's forms Ex. 8 & 9 proved that Ram Avadh Das signed these forms both in the presence of the respondent No. 1 and also in the presence of the Presiding Officer and as it is established from the evidence of Mirtanjan Nath (P.W. 1), Gogai Ram (P.W. 4), and Sri Shibban Lal Saxena (P.W. 20) that Ram Avadh Das actually worked as polling agent of the respondent No. 1 and his appointment of polling agent was admitted by the respondent No. 1 in his written statement we think that the statements of the petitioner's witnesses are correct and Ram Avadh Das Sarpanch Panchayati Adalat actually worked as polling agent for the respondent No. 1 in the last general elections. Sri Brij Behari Pande has admitted that Ram Avadh Das is Sarpanch of Chaumukha Panchayati Adalat but he has tried to show that he never worked for respondent No. 1 during the last general elections. This witness has gone to the extent of saying that Ram Avadh Das did not sign the polling agent's form of the respondent No. 1 which is obviously incorrect. Ram Lagan (R.W. 49) also tried to show that Ram Avadh Das did not work for the respondent No. 1 in the last general election but he had to admit in cross-examination that he does not know the names of the workers of various candidates and he attended the court on the date of hearing without receiving any diet money. He has however admitted that Ram Avadh Das is the Sarpanch of Chaumukha Panchayati Adalat. The respondent No. 1 tried to show that Ram Avadh Das was a sympathiser of the petitioner and he used to work for Sri Amar Nath Misir but this version cannot be accepted as correct in view of the fact that Ram Avadh Das signed the polling agent's forms Ex. 8 & 9 in the presence of the candidate as well as in the presence of the Presiding Officer which means that he actually worked as a polling agent on the polling day for the respondent No. 1 within the latter's knowledge. The respondent No. 1 has admitted that he did not know at the time of election that Ram Avadh Das was a Sarpanch of Chaumukha and so when this election petition was filed he made inquiries and then he came to know that he was Sarpanch even during the election time. The respondent No. 1 tried to show that he could not state whether the signatures on the original of Ex. 9 were actually his and his statement to the effect that the signatures on Ex. 9, 10 and other similar polling agent's forms—*vide* Ex. 12 to 14, 16, 18 to 20, 31, 32, 35 to 37 and 50 appear to be his does not befit a man of his standing and position. Ram Avadh Das was summoned by the respondent No. 1 for the 27th of July 1953 but he was not examined before the Tribunal and so it becomes clear that the theory that Ram Avadh Das was a well wisher of the petitioner has been invented for the purposes of this case at a late stage. If Ram Avadh Das had really been working for Sri Amar Nath Misir and Sri Shibban Lal Saxena the respondent No. 1 would never have appointed him his polling agent and in any case Ram Avadh Das would never have been permitted to sign the polling agent's form before the presiding officer on the polling day. The evidence of the petitioner's witnesses referred to above is thus in our opinion quite insufficient to establish that Ram Avadh Das Sarpanch Panchayati Adalat Chaumukha worked as a polling agent and also as canvasser for the respondent No. 1 during the last general election and the respondent No. 1 allowed him to work as such in furtherance of the prospects of his election.

Regarding Ram Ugrah Singh Sarpanch Munderi the polling agent's forms Ex. 10 and 11 have been produced and proved and Hansraj Singh (P.W. 7), Brajawati Lal (P.W. 8), Gogai Ram (P.W. 4) and Sri Madan Pande (P.W. 6) have deposed that Ram Ugrah Singh Sarpanch acted as polling agent of respondent No. 1 on the polling day and his witness saw him working as such. The polling agent's form Exs. 10 and 11 have been signed by Ram Ugrah Singh Sarpanch Adalat Munderi both in the presence of the respondent No. 1 and also before the presiding officer which suggests clearly that he actually worked as polling agent. Ram Ugrah Singh (R.W. 2) has been examined by respondent No. 1 and he has tried to show that he did absolutely no work nor canvassing for Sri Hari Shanker Gupta (respondent No. 1) during the last general elections. He had however to admit in cross-examination that he signed the polling agent's forms Exs. 10 and 11 in the presence of the Presiding Officer inside the polling station on the polling day. He has volunteered towards the end of his statement that he got fever shortly after signing the polling agent's form before the Presiding Officer and so he could not work. If there had been an iota of truth in this version the Presiding Officer could have been very easily examined to establish this fact but as this has not been done the belated statement of Ram Ugrah Singh cannot be deemed to be correct. Bhulni Misir (R.W. 32) has been made to say that he

knows Ram Ugrah Das of Bandi, who is the Sarpanch of Munderi, but, as Bholai Misir did not see Ram Ugrah Das either canvassing or doing any other work for the respondent No. 1 during the last general election, it is argued that it should be inferred that Ram Ugrah Das Sarpanch did not do any work for the respondent No. 1. Bholai Misir has stated in cross-examination that the Secretaries of the Panchayats used to be vigilant in order to see that no Panches or Sarpanches, Sabhapatis or Up-Sabhapatis worked for any candidate during the election period presumably because instructions had been received both from the Panchayat Raj Department and also from the higher Congress quarters that Panches and Sarpanches and Sabhapatis and Upsabhapatis should not work in elections. If Ram Ugrah Singh Sarpanch had really been stopped from working for respondent No. 1 on the polling day, he would never have gone to the polling station to sign the polling agent's form in the presence of the Presiding Officer. The conduct of Ram Ugrah Singh Sarpanch thus proves that he did act as polling agent for respondent No. 1 in spite of all instructions to the contrary from higher quarters and, if he worked for the respondent No. 1 fully knowing that he could not do so under Section 123 clause (b) of the Representation of the People Act and, if the respondent No. 1 allowed him to work as his polling agent in furtherance of the prospects of his election, the latter will have to bear the consequences. Rajeshwari Prasad (R.W. 51) has admitted in cross-examination that Ram Ugrah Singh was appointed polling agent of the respondent No. 1 at Bandi Polling Station, but this witness had asked Ram Ugrah Singh not to work as such, because he was a Sarpanch. Ram Ugrah (R. W. 2) has not supported the statement of Rajeshwari Prasad on this point, as he volunteered that he got fever shortly after signing the polling agent's forms before the Presiding Officer and so he could not work. The statement of Ram Ugrah (R.W. 2) thus shows that the theory of the respondent No. 1 that he asked all the Panches and Sarpanches not to work as such on account of the orders from the higher authorities of the Congress is not correct and so we are of opinion that the petitioner has fully proved in this case that Ram Ugrah Singh Sarpanch Munderi worked as polling agent of the respondent No. 1 at Bandi polling station within the knowledge of the respondent No. 1.

The petitioner has stated that Pashupati Nath Gupta, Sarpanch Ekma, mentioned at No. 90 in List A of Schedule I worked as polling agent of the respondent No. 1, but polling agent's form, Ex. 44, shows that Pashupati Nath Gupta was the polling agent of Sri Ram Avadh Singh. Sri Kapildeo Pande (P.W. 2) has deposed that Pashupati Nath Gupta Sarpanch had given his leaflets before the actual polling and he actually canvassed for the respondent No. 1. The petitioner has also made his statement on this point. Sri Chadrika Prasad (P.W. 35), Sri Basdeo (P.W. 42) and Sri Sarju Das (P.W. 6) have deposed that they saw Pashupati Nath Gupta Sarpanch canvassing for the respondent No. 1 and as nothing tangible has been shown against these witnesses we think their evidence should be believed.

Regarding Ram Kumar Pahari, Hanuman Prasad (P.W. 21) has stated that he saw this Sarpanch canvassing for respondent No. 1 during the last general elections. The statement of Sri Mathura Prasad (P.W. 38) proves that Sri Ram Kumar Pahari Sarpanch of Parsa Beni Panchayati Adalat has been working as such since 1949 and as the respondent No. 1 originally admitted in his written statement that one man of this name was appointed polling agent and as Ram Kumar Pahari was not examined by the respondent No. 1 in spite of being summoned we think the petitioner's witnesses should be believed with respect to Ram Kumar Pahari Sarpanch's taking part in canvassing on behalf of the respondent No. 1 with a view to promote his prospects in the last general election. The petitioner further alleged that Mohammad Sami Shah, Grish Narain Pande, Roop Narain Pande, Sadhu Saran Singh, Surva Bali Shukla, Sayed Ahmad, Ram Bahadur Sahu, Ram Sumar Tripathi, Sukhdeo Misir, Mulchand Upadhyay, Gauri Shanker, Rajpat Shukla, Kamal Mann, Shobhat Ahir, Abdul Rahman and Madhuban Pande Sarpanches had also canvassed for the respondent No. 1 during the last general elections and some of them worked as polling agents also. But as no polling agent's forms have been produced regarding these persons we think that the petitioner has failed to conclusively prove that these persons really acted as polling agents for the respondent No. 1 and so the cases of these persons need not be taken into consideration.

The petitioner has tried to show that Sri Mahadeo Prasad and Sri Sukhdeo Prasad, Panches Panchayati Adalats also worked as polling agents of the respondent No. 1 and the polling agent's form Ex. 20 shows that Sukhdeo Prasad had signed it in the presence of the respondent No. 1. Sri Gauri Shanker (P.W. 15) has stated that Sri Mahadeo Prasad Adalat Panch in Lehra Panchayati Adalat was seen canvassing for the respondent No. 1 during the last general

election by this witness and this statement has been corroborated by Sri Tameshar (P.W. 16). Sri Mathura Prasad (P.W. 38) has proved from the list of Panches that Mahadeo Prasad was a Panch of the Panchayati Adalat in January 1952. Sri Chirkut (R.W. 59) has admitted that Mahadeo Prasad is the Adalati Panch but he has tried to show that Mahadeo Prasad did not do any canvassing for the respondent No. 1 in the last general election. Sri Mahadeo Prasad and Sukhdeo Prasad were summoned by the respondent No. 1 but they were not produced in the witness-box. As such it seems established from the evidence of the petitioner as well as from the polling agent's forms that these Panches worked for respondent No. 1 during the last general election in order to promote his chances of success in the election within the knowledge of the respondent No. 1 who signed the polling agent's forms. Sri Tirbeni of Panchayati Adalat Hata Bela Haraiya is stated to have worked for the respondent No. 1 as a polling agent and the polling agent's form Ex. 32 has been proved in this connection. This form was signed by Sri Tirbeni Prasad in the presence of the respondent No. 1 and also in the presence of the presiding officer on the polling day. The statements of Sri Shibban Lal Saxena petitioner (P.W. 20), Ramai Prasad (P.W. 22), worked as polling agent for the respondent No. 1—vide the polling agent's form Ex. 31 and of Sri Mathura Pd. (P.W. 38) go to establish that Sri Tirbeni Prasad Panch Panchayati Adalat actually worked as polling agent of the respondent No. 1 during the last general election within the latter's knowledge. Sri Tirbeni Prasad was summoned by the respondent No. 1, but was not produced in the witness-box. The petitioner's evidence regarding Sri Tirbeni Prasad is practically un rebutted and so it deserves to be believed specially because in the written statement the respondent No. 1 had admitted that Sri Sukhdeo Prasad was appointed as polling agent and Mahadeo Prasad was also appointed polling agent by respondent No. 1, but he did not act.

The petitioner has stated that the different workers on behalf of the Congress organisation used to work for the Parliamentary as well as for the Assembly candidates, who had sought election to their respective seats on Congress tickets. There is no doubt that Sri Paripurna Nand, M.L.A. (R.W. 53) has tried to show that canvassing, distribution of leaflets and propaganda of election on behalf of different Congress candidates was carried on separately, but he had to admit in cross-examination that, so far as he knew, the District Congress Committee had issued only once notice giving a list of all the Congress candidates of the District asking the electorate to vote for them and he further remembered that the District Congress Committee did not issue notices constituency-wise and no separate notice was issued in his favour. He had further to admit that a poster was published by him making a reference to himself and the respondent No. 1 and it contained a calendar as well as his photograph and that of the respondent No. 1, Ex. 51. This poster clearly shows that canvassing was carried on jointly in favour of the respondent No. 1 and other Congress candidates. It has been urged on behalf of the petitioner that Panches of Panchayati Adalats like Sarju Das and Jhinnu Prasad, who are stated to have worked for Sri Ram Avadh Prasad and other Congress candidates, also worked for the respondent No. 1 and, in view of the evidence to which reference has been made by us above, this argument of the petitioner becomes probable.

The petitioner has produced the polling agent's form of Avadh Raj, Panch Panchayati Adalat Kaimi—vide Ex. 13, and also the polling agent's form Ex. 21 regarding Ramhit Panch of Mainahwa. The polling agent's form Ex. 30 was filled up by the respondent No. 1 in favour of Qasim Ali, Panch Pharendra Buzrug, while the polling agent's form of Kalapnath Panch and Vice-President Gaon Sabha Lajjar Mahadewa is Ex. 29 and the polling agent's form regarding Abdul Majid Khan is Ex. 53. The polling agent's form relating to Sant Das Panch is Ex. 65, while the polling agent's form regarding Baram Das alias Ram Briksh Das Panch of Panewa Panchi is Ex. 36; and all these forms are signed by the respondent No. 1. The evidence of the petitioner's witnesses referred to above as well as the forms mentioned above go to show that the respondent No. 1 appointed these Panches as his polling agents in order to promote his chances in the election and, in any case, he attempted to promote his chances by securing the assistance of these Adalati Panches. Regarding Bhagwati Yadav, Ram Kumar, Jai Karan, Salamat Ullaha (P.W. 29), Barkat Ullah, Mahmood, Jhinnu Parsad, Ishwar Saran, Ram Lakhan Lal, Kamla Singh, Surya Man and Munehswar Das Panches, the petitioner and his witnesses have deposed that they canvassed for respondent No. 1 and other Congress candidates and, although most of these Panches had been summoned by the respondent No. 1, most of them were not examined. Jai Karan (R.W. 47) and Surya Man (R.W. 24) have been examined by respondent No. 1 and they have vaguely stated that they neither canvassed nor distributed leaflets nor did they work for the respondent No. 1 in the last general election. Surya Man (R.W. 24) has admitted that there is no other

Adalati Panch of the same name in the Adalati Panchayat Bhिताuli, except this witness and he is also the Mukhia of village Bhainsi. This witness as well as Jai Karan has tried to show that they had no interest in any particular candidate and, as no sufficient details were given with regard to the place, date, time and details of canvassing done by these people, we think the general evidence of the petitioner's witnesses regarding canvassing by Panches unsupported by any documentary evidence need not be accepted as correct. But it is established from the evidence on the record referred to above that Sri Mahadeo Prasad, Sri Sukhdeo Parsad, Sri Ramhit, Sri Kalap Nath, Sri Brahm Das alias Ram Brisksh Das, Sri Avadhraj and Sri Tirbeni Prasad, Panches, Panchayati Adalats worked for the respondent No. 1 in the last general election within his knowledge in order to promote his chances of success in the election.

The petitioner has stated that about 50 Sabhapatis and 40 Upsabhapatis worked as polling agents of the respondent No. 1 during the last general election and his statement shows that Tilak Dhari, President Gaon Sabha, Harpur, Sri Kishen Das, President Gaon Sabha, Patrengwa, Kamta Das, President Gaon Sabha, Siswa Raja (mentioned at Nos. 103 of List A, 33 of list B and 150 of List A of Schedule I of the petition) worked as polling agents of the respondent No. 1. The polling agent's form Ex. 12 which has been proved by Sudama Prasad (P.W. 13) proves that Tilakdhari signed this form No. 6 in the presence of the Presiding Officer which means that he actually worked as a polling agent. If he had not worked as a polling agent the Presiding Officer could have been examined by the respondent No. 1 to prove that he did not actually work on the polling day but the Presiding Officer had not been examined. The evidence of Diroyodhan Prasad (P.W. 3) and of Sri Mathura Prasad (P.W. 38) proves that Tilakdhari was the Gram Sabhapati of Harpur Mahant and he actually worked as polling agent for the respondent No. 1 in the last general election. Regarding Sri Kishen Das it has been admitted in the written statement that he acted as agent and we have already discussed the evidence in this connection when dealing with Sri Kishen Das working as polling agent in his capacity as a mukhia. Regarding Kamta Das, Gram Sabhapati the petitioner has produced the polling agent's form, Ex. 16, and this form shows that Kamta Das signed it in the presence of the respondent No. 1 and then again before the Presiding Officer on the polling day. The statement of Ram Chander Prasad (P.W. 17), Upsabhapati of Gaon Sabha, Imilia and Siswa Raja shows that Kamta Das is the Sabhapati of Imilia. Ram Chander Prasad duly proved polling agent's form, Ex. 16. The statement of the petitioner as well as of Sri Mathura Prasad (P.W. 38) go to establish that Kamta Das is the President, Gaon Sabha, Siswa Raja and the statement of Sheojapat Singh (R.W. 20) to the contrary cannot be accepted as correct. Sri Kishen Das, Kamta Das and Tilakdhari were summoned by the respondent No. 1 but they were not produced in the witness-box.

It has been admitted by the respondent No. 1 in his written statement that Ajodhya Ram mentioned at No. 16 of list B of Schedule I of the petition acted as polling agent but it was denied that he was the President of the Gaon Sabha, Mainsar. The polling Agent's form Ex. 14 has been produced by the petitioner and it has been duly proved by Gauri Shanker (P.W. 15). Sri Prag (P.W. 19) has stated on oath that he had seen Ajodhya Ram, Sabhapati of Nainsar working as polling agent of Respondent No. 1 on Nainsar polling station. The statement of Sri Mathura Prasad Pande (P.W. 38) establishes that Ayodhya Ram is the Gram-sabhapati of Nainsar. Ajodhya Ram was summoned by Respondent No. 1 but he was not examined.

Ram Bharat, Gram Sabhapati of Naosagar mentioned at No. 15 of List B of Schedule I of the petition has been admitted by the respondent No. 1 as having worked in the capacity of a polling agent. Similarly regarding Azmat Khan Gram Sabhapati, Sonwa it has been admitted by the respondent No. 1 in the written statement that he acted as polling agent on his behalf on the polling day. Regarding Mangal Das, Sabhapati Gram Sabha, Jarrar we have already mentioned that the polling agent's form Ex. 15 and the statements of Diroyodhan Prasad (P.W. 3), Ram Chander Prasad (P.W. 17), Sri Shibban Lal Saxena (P.W. 20), Sri Mathura Prasad Pandey (P.W. 38), Sri Puranmasi (P.W. 31) and Sri Ram Prasad (P.W. 39) go to show that Mangal Das, President, Gram Sabha, Jarrar and Mukhia, Jarrar worked at Rajmandil polling station and his statement before us on behalf of the respondent No. 1 (R.W. 39) cannot be accepted as correct. Sheojapat Singh (R.W. 20) and Sri Ram Autar Sharma (R.W. 55) have also tried to show that Mangal Das did absolutely no work for the respondent No. 1 in the last general election, but the evidence is conclusively negated by the documentary evidence referred to above and also by the evidence of Sri Mathura Prasad Pandey (P.W. 38), who is an official witness and against whom nothing has been suggested by the respondent No. 1.

Bansraj, President, Gaon Sabha, Sahjanwa is stated by the petitioner to have acted as polling agent of the respondent No. 1 and his polling agent's form is Ex. 55. In the written statement the respondent No. 1 admitted that one Bansraj was appointed as polling agent, but he did not act as such, as the form, Ex. 55 was not signed by Bansraj in the presence of the Presiding Officer, we think the respondent No. 1's contention regarding this Sabhapati can be accepted as correct.

Regarding Mahindra Parsad Shukla mentioned at No. 2 in List B of Schedule I it has been admitted in the written statement that he acted as polling agent of the respondent No. 1, but it was stated that the respondent No. 1 did not know whether he was the President, Gaon Sabha, Katai Kot. The evidence of Sri Mathura Prasad (P.W. 38) fully establishes this fact and so it is proved that this President of the Gram Sabha also acted as polling agent of the respondent No. 1 in furtherance of his prospects in the election.

Ramai Prasad, Jamuna Singh, Runder Mani Tirpathi, and Patandin, Presidents, Gaon Sabhas were alleged by the petitioner to have worked for the respondent No. 1 in the last general election, but as these persons were not named in Schedule I of the Petition their cases need not be considered even though the polling agent's forms of Ramai Prasad and Jamuna Singh, Exs. 31 and 50 have been produced.

Regarding Phunni Singh, Moti Lal, Uttar Rai, Shyam Lal, Rupai, Harbans, Goli Rai, Durga Shukul, Gunga Saran, Parmeshwar and Bhagwati Prasad Pandey, Presidents, Gram Sabhas, the petitioner has produced polling agent's form, Ex. 57 regarding Phunni Singh, but the polling agent's forms of the other Sabhapathis mentioned above have not been proved. The respondent and his witnesses including Goli Rai (R.W. 22) have denied that these Sabhapathis canvassed or acted as polling agents of the respondent No. 1 and, as some of these Sabhapathis are proved to have worked for other congress candidates, we think the cases of these sabhapathis also cannot be deemed to be proved in this case.

Regarding Upsabhapatis of Gram Sabhas, the petitioner has stated on oath that Lallan Das Upadhaya, Sabhapati, Gram Sabha, Majrajunj, worked as polling agent of the respondent No. 1 and the polling Agent's form, Ex. 37, shows that Lal Das had signed this both in the presence of the respondent No. 1 as well in the presence of the Presiding Officer, which means that he actually worked as polling agent and the statements of Hausla Pathik (P.W. 4), Harihar (P.W. 26), Mangal Prasad (P.W. 30), Shibban Lal Saksena (P.W. 20) and Sri Mathura Prasad Pandey (P.W. 38), which go to show that Lallan Das did work as polling agent of respondent No. 1 becomes very probable. The respondent No. 1 summoned Lallan Das, but did not produce him in the witness-box.

The petitioner produced the polling agents form Ex. 35 about Nirhu, Vice-President, Gram Sabha, Khaincha and the polling agent's forms Exs. 20, 38, 26 and 54 have been produced regarding Sukhdeo, Shobarat Das, Ramhit and Tap Nath Misra, Upsabhapatis. Bansraj (R.W. 40) Upsabhapati Gram Sabha Harpur Mahant, has been examined by the respondent No. 1 and he has stated on oath that he did not work for the respondent No. 1 in any manner during the last general election. His statement in cross-examination no doubt shows that he had signed the polling Agent's form of Sri Sukhdeo, but this fact cannot in any way be deemed to be sufficient for holding that this Upsabhapati also worked for the respondent No. 1 in the last general election. Rambali, Upsabhapati was mentioned at No. 20 in the List B of Schedule I of the Petition and it was admitted in the written-statement that one Rambali was appointed by the respondent No. 1 as his polling agent. It was, however, contended that Rambali did not work as polling agent for the respondent No. 1 and, as there is no cogent evidence to establish that he actually worked as polling agent, we think the petitioner has failed to prove that this Upsabhapati of Gram Sabha Dhonghat worked as polling agent for the respondent No. 1 in the last general election. It thus becomes clear that the petitioner has succeeded in proving that Lallan Das, Upsabhapati, Gram Sabha, Mahrajgunj actually worked as polling agent of the respondent No. 1 the last general election in furtherance of his prospects at the election.

The petitioner has stated that Bramh Das alias Ram Briksh Das, Branch Postmaster of Panewa Panei and Panch. Panewa Panai worked as polling agent of the respondent No. 1 and we have shown above that this allegation has been fully established *vide* the polling agent's form. Ex. 35. The petitioner further alleged that Moti Parsad and Ram Chander Pandey, Branch Postmaster also worked for the respondent No. 1, but as there is no documentary evidence to

substantiate this allegation and the oral evidence of Vidya Charan (P.W. 43) and Sri Mathura Prasad (P.W. 38) merely shows that Moti Prasad was a Branch Postmaster and, as the evidence of these witnesses does not prove that he actually worked for the respondent No. 1 we think that the petitioner's allegation that this Branch Postmaster canvassed and acted as agent of the respondent No. 1 in the last general election has not been proved. Moti Prasad has been produced by the respondent No. 1 in this case and Ram Chander Pandey has also been examined by him. The evidence of Moti Prasad (R.W. 69) and of Ram Chander Prasad (R.W. 57) go to establish that they did not work for the respondent No. 1. As such it becomes clear that only Brahm Das alias Ram Briksh Das, Branch Postmaster, Panewa Panel is proved to have worked as the polling agent for the respondent within the latter's knowledge and, in order to promote his chances of success at the election.

The Petitioner has stated that other Government servants of Uttar Pradesh State worked for the respondent No. 1 during the last general election. It was vaguely alleged in para. 9 of the petition that Sri B. N. Rai, S.D.O. Pharenda and Returning Officer Pharenda Tahsil, worked for the respondent No. 1, but this allegation has not been substantiated in any manner. Sri Khalil, constable, No. 322 (R.W. 30) has deposed that he did not canvass or do any other work for the respondent No. 1 during the last general election and so the vague statements of the petitioner, Satrangi Das (P.W. 23), Sri Hausla Pathik (P.W. 24) and Nohar (P.W. 25) regarding Mohd. Khalil's working for the respondent No. 1 during the last general election cannot be accepted as correct.

Nazir Chaprasi Tahsil Mahrajgunj (R.W. 29) has also stated that he did not canvass or do any other work including propaganda, distribution of leaflets etc. for the respondent No. 1 in the last general election, and in face of his clear statement, we think that the vague statements of Sri Shibban Lal Saxena (P.W. 20), and Sri Harihar (P.W. 26) to the effect that Nazir Chaprasi worked for the respondent No. 1 cannot be accepted as correct.

Regarding Sri Avadh Raj Tewari, Inspector, Panchayati Adalat, the petitioner has not examined any witness to corroborate his statement and, as no documentary evidence has been produced to show that Sri Avadh Raj Tewari really worked for the respondent No. 1 in the last general elections, we think that the case regarding Sri Avadh Raj Tewari also has not been proved by the petitioner.

Sri Bholai Misir, Secretary, Panchayati Adalat, Bisoi Khore was alleged by Sri Madan Pandey (P.W. 6) and Ram Dayal (P.W. 14) to have worked for the respondent No. 1. Sri Mathura Prasad Pandey (P.W. 38) has proved that Sri Bholai Misir, is the Secretary, Panchayati Adalat, Bisokhore, Bhulai Misir has been examined by the respondent and the statements of Sarju Ram (R.W. 5), Tirath Raj (R.W. 6), Raghunath (R.W. 7), Srikanth Malviya (R.W. 8), Raj Kishore (R.W. 19) and of Bholai Misir himself (R.W. 32) go to establish that Bholai Misir did not canvass or do any other work for the respondent No. 1 in the last general election.

The evidence of Sri Ganga prasad Shukul (R.W. 58), who was the Secretary, Panchayati Adalat, Jogia, show that he also did not work for the respondent No. 1 and the vague statement of Gogai Ram (P.W. 4) which does not disclose essential particulars cannot be deemed to be sufficient to rebut the statement of Sri Ganga Prasad.

Vishwanath Misra, Secretary, Panchayati Adalat, Pharenda Buzrug (R.W. 37), Sant Mani, Secretary, Panchayati Adalat, Mahua Adda (R.W. 37), Chummun Upadhaya, Secretary, Panchayati Adalat, Bhagwanpur (R.W. 38) and Bhola Nath Secretary, Panchayati Adalat, Amahwa (R.W. 35) have all deposed that they did not work for the respondent No. 1 in the last general elections and the petitioner has merely proved by means of the evidence of Sri Mathura Prasad Pandey (P.W. 38) that these witnesses are the Secretaries of the Panchayati Adalats. We think of the petitioner or of Hanuman Prasad (P.W. 21) and Gogai Ram (P.W. 24) is quite insufficient to establish that these secretaries of Panchayati Adalats really worked for the respondent No. 1 in the last general election and we hold accordingly.

The petitioner alleged that Sri Ram Mangal, Patwari, Birampur Bardiha, Sri Gorakh Lal, Patwari of village Jara, Sri Banwari Lal, Patwari of Nipania. Sri Munna Lal, Patwari of V. Kunsarwa. Sri Ram Niranjan Lal, Patwari of village Natwa worked for the respondent No. 1 in the last general election. The respondent No. 1 has examined Ram Mangal Lal (R.W. 61), Gorakh Lal (R.W. 60),

before us and they have denied the petitioner's allegations. Regarding the other Patwaris mentioned above there is practically no evidence on this record to show that they worked for the respondent No. 1 in the last general election. Regarding Asalat Baksh, Patwari of village Gaonaria Jaurahar the petitioner has examined himself and Mangal Prasad (P.W. 30) and it is now established that Asalat Baksh had retired on the 30th June 1951 and as his name was not mentioned in the lists A and V of Schedule I we think that his case need not be considered at all. Thakur Prasad, Patwari of village Banspar (R.W. 70) has stated on oath that he never worked either as polling agent of the respondent No. 1 or as canvasser and he has further stated that he did not distribute any pamphlets or leaflets for the respondent No. 1. The petitioner has examined Sri Khelari Prasad (P.W. 5) to state that Thakur Prasad sometimes canvassed for the respondent No. 1 along with his nephew Narinder who worked as a polling agent of the respondent No. 1 at Banspar. As the evidence of Khelari Prasad has not been substantially corroborated by any other witness we are unable to believe him on this point.

Regarding Narendra who is alleged by the petitioner to be an acting Patwari, Banspar only Khelari Prasad has been examined and we think that his evidence is not sufficient to prove that Narindra actually canvassed for the respondent No. 1 in the last general election. The evidence of Ram Autar Sharma (R.W. 55) goes to show that Ram Mangal Lal, Thakur Prasad and other Patwaris did not work for the respondent No. 1 in the last general election. As Narindra is not proved to be a Patwari employed in the U.P. State by the Government and he appears to have merely worked for a patwari unofficially we think the allegations of the petitioner that Ram Mangal Lal, Gorakh Lal, Banwar Lal, Munna Lal, Ram Niranjana Lal, Asalat Baksh, Thakur Prasad and Narindra Patwaris worked for the respondent No. 1 in the last general election has not been proved.

After a consideration of the entire oral and documentary evidence on the record to which reference has been made above at appropriate places we are definitely of opinion that it is proved in this case that the respondent No. 1 obtained, procured and attempted to obtain assistance in the furtherance of the prospects of his election other than giving of votes by such persons during last general elections from Sri Kishan Das and Mangal Das Mukhias; Ram Ugrah Singh, Ram Avadh Das, Pashupati Nath Gupta and Ram Kumar Pauhari, Sarpanch, Panchayati Adalats; Sri Maha Deo Prasad, Sri Sukhdeo Prasad, Sri Tribani Prasad, Sri Avadh Raj. Sri Ram Hit, Sri Kalapnath, Sri Brahm Das *alias* Ram Briksh Das, Panches Panchayati Adalats; Sri Kishen Das, Kamla Das and Tilakdhari, Presidents, Gaon Sabhas, and Lallan Das, Upsabhapati, Gaon Sabha; and Brahm Das *alias* Ram Briksh Das, Branch Postmaster, who were serving under the Government of the Uttar Pradesh State at the time when this general election was held and these persons worked as his polling agents and canvassers.

It is now to be seen whether the appointment of Sarpanches, and Panches of Panchayati Adalats, Sabhapatis and Upsabhapatis of Gram Sabhas, Mukhias and of Brahm Das *alias* Ram Briksh Das, Branch Postmaster as polling agents by the respondent No. 1 legally amounts to the commission of major corrupt practice under S. 123(8) of the Representation of the People Act 1951. S. 123(8) of the Representation of the People Act runs as follows:—

The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the connivance of a candidate or his agent, any assistance for the furtherance of the prospects of the candidate's election from any person serving under the Government of India or the Government of any State other than the giving of vote by such person.

Explanation for the purposes of this clause:—

- (a) A person serving under the Government of India shall not include any person who has been declared by the Central Government to be a person to whom the provisions of the clause shall not apply;
- (b) A person serving under the Government of any State shall include a Patwari Chaukidar, Dafadar, Ziladar, Shanbagh, Karnam, Talati, Talari, Patil, Village Munsif, Village Headman or any other village officer by whatever name he is called, employed in any State, whether the office he holds is a wholetime office or not, but shall not include any person (other than any such village officer as aforesaid) who has been declared by the State Government to be a person to whom the provisions of this clause shall not apply.

The learned advocate for the respondent No. 1 has urged that the Sarpanches and Panches of Panchayati Adalats and Sabhapati and Upsabhapatis of Gram Sabhas, Mukhias and Branch Postmasters are not persons serving under the Government of India or the Government of State and so, even if this Tribunal comes to the conclusion that the respondent No. 1 appointed such persons as his polling agents for the furtherance of the prospects of his election, the respondent No. 1 would not be guilty of committing any major corrupt practice within sub-section (8) of S. 123 of the Representation of the People Act.

The argument briefly put is that the provisions under consideration is with respect to "any person serving under the Government of India or the Government of any State" and, as this expression roughly corresponds to the common phrase 'Government Servant' and the persons named above cannot be deemed to be Government servants, the prohibition would not apply to Sarpanches, Panches, Sabhapatis, Upsabhapatis and Branch post-masters. According to the respondent No. 1, the expression 'Government Servant' implies appointment and control by the Government and relationship of employer and employee with remuneration. The Sarpanches, Panches, Sabhapatis and Upsabhapatis are contended to be appointed by an autonomous body created by the U.P. Panchayat Raj Act, 1947, and so it has been urged that these office-holders should not be deemed to be Government servants, even though under S. 28 of the U.P. Panchayat Raj Act they have been declared to be public servants within the meaning of S. 21 of the Indian Penal Code. S. 2(n) of the U.P. Panchayat Raj Act defines 'public servant' as meaning a public servant as defined in S. 21 of the Indian Penal Code and S. 28 of the Panchayat Raj Act lays down that every member or servant of Panchayati Adalat, Gaon Panch, a joint committee or any other committee under the Panchayat Raj shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code and this clearly means that all these office-holders will be deemed to be public servants under the U. P. Panchayat Raj Act also. The word "Servant of Government" has been defined in S. 14 Indian Penal Code and this section states— 'the words servant of Government denote any officer or servant continued, appointed or employed in India by or under the authority of Government.' These words clearly show that it is not necessary that the appointment must have been made by the Government and even if a servant employed in a foreign country is allowed to continue to serve the Indian Union Government he will be deemed to be a Government Servant. There is no doubt that the Sarpanches, Panches, of Panchayati Adalats, and Sabhapatis and Upsabhapatis of Gram Sabhas are elected under the U.P. Panchayat Raj Act by the electorate, but, under Section 48 of the U.P. Panchayat Raj Act, a Panch may be removed at any time by the Prescribed authority in the manner and for the reasons prescribed and a Panch removed under sub-section (1) of this section is not entitled to re-election as a Panch for a period of 3 years. Prescribed authority has been defined under S. 2 (q) of the Panchayat Raj Act meaning as an authority to be notified as such by the State Government whether general or for any particular purpose. Rule 29 of the Panchayat Raj Rules given in Chapter II of these Rules lays down that in the absence of any other authority appointed by the Government in this behalf, the District Magistrate shall be the prescribed authority for the purposes of Sections 5, 9, sub-section (3) and (4) of Section 12, Sections 42, 102 and 103 of the Act and for the purposes of Sections 17(e), 25, 27 and sub-section (2) of S. 30, S. 36, sub-section (3) of S. 41, Secs. 44, 47, 48, 96 and 98 of the act, President of the District Board or a Member of the board appointed by the President or the Inspector or any other Officer who may be appointed by the Provincial Government shall be the prescribed authority for the purposes assigned to him. The Provincial Government may delegate its powers under sec. 95 of the Act (for instituting any inquiry in respect of any matter relating to a Gaon Sabha, Gaon Panch or Panchayati Adalat and other matters) either by a general or special order or to any Officer notified in the Provincial Gazette and the Government may by a notification appoint any other prescribed authority in place of or in addition to those mentioned in this Rule. It clearly follows from the above mentioned sections and rules that the Government can remove the Panches of the Panchayati Adalat or the Sabhapati or Upsabhapati of Gram Sabhas and so it cannot be said that the Sarpanches, Panches, Sabhapatis and Upsabhapatis under the Panchayat Raj Act are not public servants and they are not persons serving under the Government of the State of Uttar Pradesh. As they serve in different villages of the State Government they can be properly deemed to be village Officers under clause (b) of the Explanation to sub-section (8) of S. 123 of the Representation of the People Act. 'Office' as defined by Cowell is a function by virtue thereof a man has some employment in the office of another. Webster defines it to be a duty charge of trust. He who performs a duty of a public office is an officer. He who has a public charge or employment or even a particular employment affecting the public is said to hold or be in

office. A village Officer would thus mean every functionary in the village invested with some public authority or control of the office of the village as distinguished from mere contractual obligations referred to in the Government of India Act, 1858.

'Servant' has been defined by Webster as one who serves or does service voluntarily or involuntarily; a person who is employed for another in offices or for other labour, and is subject to his command; a person who labours or exercises himself for the benefit of another, his master or employer, a subordinate helper. The term 'servant' is very broad and if taken in its legal sense would embrace a class of persons retained, hired, or employed in the business of another.

'Servant' has also been defined as any person who, by contract or operation of law, is for a limited time subject to the control of another; one who does work under the direction of another, who not only prescribes the nature of his work, but directs, or may direct the wishes also, or as it has been put, retains the power of controlling the work—Vide P. Ramanatha Ayr's Law Lexicon 1940 edition, p. 1176.

This definition clearly shows that remuneration is not absolutely necessary in the case of every employee or servant and so the fact that Sarpanches, Panches, Sabhapatis and Upsabhapatis do not receive any pay will not be of any material consequence as they can be removed by the prescribed authority and they have to work according to rules and also according to instructions issued by the Government and the prescribed authority from time to time. It thus becomes clear that a particular person will be deemed legally to be servant of another if he fulfills the following four tests:—

- (1) Whether the person who is said to be servant of another has been appointed and can be dismissed by the alleged master;
- (2) Whether he is under the control and works according to the directions of a master;
- (3) Whether he receives any remuneration, emoluments, and
- (4) Whether by the functions discharged by him he obeys his master.

If we apply all these 4 tests to the Panches of Panchayati Adalat and Sabhapatis and Upsabhapatis of the Gram Sabhas it becomes clear that they work at the behest and in the manner laid down by the Government and the prescribed authority and as they work as public servants in villages within the State of U.P., they can legally be deemed to be village officers serving under the State of U.P. and the mere fact that they have been appointed by process of election and they form part of a autonomous body created by the Panchayat Raj Act, 1947 A.D. will not be material for the purposes of investigation in election matters. A broad survey of the representation of the People Act, 1951 shows that considerable stress has been laid on the fact that elections must be free and freedom and purity of elections must be punctiliously and adequately safeguarded and it was with this view that sec. 123, sub-sec. (8) was enacted with a view to see that persons exercising sovereign powers of administering justice etc. or if dealing with State Lands should not be allowed to unduly influence the voters in any manner during the course of election—Vide A.I.R. 1950 Allahabad, p. 266 (Ram Ghular and another vs the Government of U.P.) at p. 208 column 2 and para. 13 and 15. U. State has under the U.P. Panchayat Raj Act employed Panches and Sarpanches exercising judicial functions and the High Court exercises powers of superintendence over these Adalats under Article 226 of the Constitution. As Sarpanches and Panches duties are carried in the exercise of Governmental functions (Sovereign powers of Administering Justice), they can easily exercise considerable influence on the electorate and so a restriction has been imposed on them under section 123(8) of the Representation of the People Act so that they might not interfere in the elections and they should not assist any candidate in order to further his prospects at an election. The fact that the Sarpanches, Panches, Sabhapatis and Upsabhapatis are employed by an autonomous body cannot possibly protect them or the candidate, who procures their help to further his prospects at an election as this function is not to be exercised by them in any manner under the provisions of the U.P. Panchayat Raj Act and, if the Sarpanches, Panches, Sabhapatis and Upsabhapatis go beyond the scope of the U.P. Panchayat Raj Act and render assistance to any candidate in order to promote his chances at an election the candidate cannot be protected simply because the Sarpanches, Panches, Sabhapatis and Upsabhapatis have been appointed to exercise different functions under the U.P. Panchayat Raj Act. It is really the power which one exercises by virtue of office over the electorate that is material and if any of the village officers exercising and dispensing

justice and dealing with State property (who can thereby exercise considerable influence on the electorate) renders assistance to any candidate to promote his chances at election at the instance of the candidate, we think that the candidate under such circumstances must be deemed to commit a major corrupt practice under Section 123(8) of the Representation of the People Act. The autonomy conferred by the Panchayat Raj Act means only the members of the Panchayat and Panchayati Adalats are free to exercise their functions which they are enjoined to exercise under the Act, but, if they go beyond the scope of the Act, they cannot claim protection simply because they are employed under an autonomous body, where they are controlled by the prescribed authority in all matters connected with the exercise of their official duties.

The learned Advocate for the respondent No. 1 has relied on *Deo Chand & Others—Vs.—Vashist Narain* and others reported in U.P. Gazette Extraordinary, dated May 22, 1953, in which it has been laid down that the words 'any persons serving under the Government of India or the Government of any State' roughly corresponds to the common phrase 'Government Servant'. We respectfully do not agree with this interpretation put on the words of this section. For reasons given above, we think that such persons may not necessarily be a Government Servant and must not necessarily receive any pay from the Government nor be formally appointed by the U.P. State Government. It is sufficient if he can be dismissed by the Government or by any other Officer to whom the powers of dismissal have been delegated and he should work under the control of the prescribed authority and by the exercise of functions discharged by him, he should assist his master or employer. If the Legislature intended to include only Government servants the simple word 'Government servants' could have been used and it was not necessary to use the words 'any person serving under the Government or the Government of any State' and in clause (b) of the explanation the words 'or any other village officer by whatever name is called, employed in that State, whether the office he holds is a whole-time office or not' would not have been used. If it had been intended to include only Government, the words 'employed in the State' could never have been used, but the words employed by that State would have been used. In the case of *Deo Chand* and others Vs. *Vashist Narain* and others reported to above, it has been observed at P. 11 that under section 123(8) of the Representation of the People Act, 1951, Parliament had made a law prohibiting Government Servants from taking part in election. But, as the Panches of Village Panchayats could not be deemed to be Government Servants, they could not be deemed to be prohibited from taking part in election. We have referred to the provisions of the Act and in our opinion the provisions of S. 123(8) of the Representation of the People Act go further and they did not merely prohibit Government Servants, but all other village officers exercising Sovereign functions on behalf of the State as public servants (as distinguished from mercantile or contractual obligations) from taking part in elections.

It has been argued on behalf of the respondent No. 1 that the words *Patwari*, *Chaukidars*, *Dafadars*, *Zaidars*, *Shanbagh*, *Karnam*, *Talati*, *Tulari*, *Patil*, *village Munsif* and *Village Head man* are all paid servants in some part of the Indian Union or other and so the words 'or any other village officer by whatever name he is called' should be deemed to refer to other sorts of Government Servants, who receive pay from the Government. So far as the *Patwaris* are concerned the position is quite clear and even in the *Uttar Pradesh State Patwaris* receive regular salary from the Government. Regarding *Chaukidars*, it has been contended under Act 20 of 1856 under section 7 and 8 that *Chaukidars* are paid Government servants. Similarly *Dafadar* is a police office in Bengal—Vide *Wilson's glossary* 1940 Edition, p. 181 and *Zaildar* has been contended to be derived from the word 'Zail', which means a specification of different rates at which the rent is to be paid whether in money or in kind by *ryot*—vide *Wilson's glossary*, p. 896 and *Village Officers* dealing with such tenants are stated to be *Village Officers* dealing with such tenants are stated to be *Zaidars*—Vide *Punjab Land Revenue Act, 1887*, Act XVII of 1887, S. 28 and *Beden Powels Land System* in *British India*, Vol II, Ps. 251 and 252 and *Beden Powels Land System* in *British India*, Vol. 3, P. 107.

Regarding '*Shanbagh*', reliance has been placed by respondent No. 1 on *Law Laxicon*, P. 1185, to show that *Shanbagh* means the same thing as *Karnam* and reliance has also been placed on the *Land Revenue and Tenure* in *British India* by *Beden Powell*, 1913 Edition, P. 252, in which it has been stated that village accountants are given special holding of land *Watan* and in *Madras* there are several Acts and Regulations relating to the *Karnam* or village account vide the *Madras Hereditary Village Officers Act III of 1895* (*The Made Code*, Vol. II, 1940 Edition, P. 254).

Regarding 'Talati' and 'Talar', reliance has been placed on Land System in British India by Heden Powel Vol. III, P. 309, and on Sections 16 and 85 of Act V of 1879. 'Patil' is stated to be the same as the Patel of Bombay, Berar and Central India and the Patels receive remuneration, vide the Government of India Gazette Extraordinary, Part II, S. 3, No. 265, P. 1375 at P. 1380, Para. 23. It has been contended that Patils are also Government Servants receiving regular salary from the Government. Similarly, regarding Village Munsif, it has been shown from Madras Village Courts Act, Act I of 1889, S. 5 that Village Munsif is the Judge of the Court of a Village Munsif established under that Act, but it is not clear whether he receives any salary or not.

Regarding 'Headman', an attempt has been made to show that Village Headmen are paid officials in the Punjab and C.P. and so the Sarpanches, Panches, Saonapati and Upsaonapati of the U.P. State, who do not receive any salary should not be deemed to be Village Officers serving under the U.P. State. In our opinion the question whether any particular Officer bearing a particular designation in any particular State does or does not receive salary from the Government is not material for the purposes of the present enquiry and all that is to be seen is whether Sarpanches, Panches, Sabhapatis, Upsabhapatis serving in villages of the State of Uttar Pradesh, who could exercise influence on the voters during the course of election on account of powers which are exercised by them on behalf of the State during the course of official duties were made to assist the Respondent No. 1 for furtherance of prospects of his election or not and, as we have shown above, the evidence on the record amply proved that Ram Agran Singh, Ram Avadh Das, Pashupati Nath Gupta and Ram Kumar Pahari Sarpanches Panchayati Adalats; Mahadeo Prasad, Sukhdeo Prasad, Tribeni Prasad, Avadh Raj, Ramhit, Kalapanata and Bramh Das alias Ram, Brisksh Das, Panches Panchayati Adalats; Sri Kishen Das, Kamta Das and Tilakdhari, Presidents Gaon Sabhas; and Lallan Das, Vice-President, worked as polling agents and canvassers of the Respondent No. 1 within his knowledge during the last general elections the Respondent No. 1 will be legally deemed to have committed major corrupt practices within the meaning of S. 123(8) of the Representation of the People Act. Looking to the duties of a polling agent, which are primarily to safeguard the interest of a candidate in the election, there cannot be any doubt that the assistance given by a polling agent is in furtherance of the prospects of the candidate's election, vide Sri Ghari Ram Vs. Sri Ram Singh, reported in Government of India, Gazette Extraordinary, Part II, S. 3, No. 45, dated February 21, 1953, P. 477, at P. 490. The Respondent No. 1 knew full well that instructions had been received from the higher Congress quarters as well as from the Panchayat Raj Department, U.P., that the service of these Village Officers should not be utilised in the elections—vide Exs. 42 and 43 and the statements of Sri Ram Prasad (P.W. 39) and statement of Sri Mathura Prasad (P.W. 38), but even then he did not abstain from obtaining assistance from them. The Respondent No. 1 is proved to have utilised the services of Mukhias, Sri Kishen Das and Mangal Das, who be legally deemed to be village Headmen in view of Paras 1099 to 1107 of the Manual of Government Orders, U.P. Chapter LII.V-1, Ps. 244 and 245, and so his obtaining assistance from the Mukhias will also amount to the commission of major corrupt practice under section 123(8) of the Representation of the People Act. It has been held by a number of Election Tribunals that obtaining assistance from Village Officer such as Sarpanches and Panches of Panchayat Adalats and Mukhias as well as Zamindars amounts to commission of a major corrupt practice under Sec. 123(8) of the Representation of the People Act, vide the Gazette of India Extraordinary, Part II, S. 3, No. 312, dated 15th December, 1953, P. 3487 at 3497 (Sri Balchand and another Vs. Sri Lakshmi Narain and others), Gazette of India Extraordinary Part II, S. 3, No. 308, dated 11th December, 1953 P. 3455 at P. 3461 and 3462 (Sri Ganga Prasad Shastri Vs. Sri Panna Lal and others), and Gazette of India, Extraordinary, Part II, S. 3, No. 307, dated 9th December, 1953 (Sri Raghunath Singh Vs. Sri Kamla Prasad Saxena, P. 3439 at P. 3449 and 3450; vide also Sri Madan Pal Singh Vs. Sri Rajdeo Upadhaya, reported in U.P. Gazette, Extraordinary, dated 18th May, 1953 (Election Petition No. 253 of 1952.) Even one instance of major corrupt practice has been held to be sufficient to invalidate the election Lahiri Singh Vs. Attar Singh, reported in Government of India Gazette Extraordinary, Part II, S. 3, No. 34, dated February 5, 1953, P. 315 at P. 321.

The Respondent No. 1 has filed the list of persons against whom disciplinary action was taken by the District Congress Committee Vide Exs. A8 and A9, vide also the register, Ex. A4, showing the names of the members of the District Congress Committee who took initiative in these disciplinary proceedings and the extract from the register Ex. A5 and the Judgment Ex. A6 in order to show that some of the petitioner's witnesses are inimical to him, but we think these documents do not go to discredit the petitioner's case, which is proved by the polling

Agent from Exs. 8 to 18 and 20, 21, 29, 30 to 38, 40, 44, 50 and 52 to 75. The Respondent No. 1 did not specifically contend in the written statement that the Sarpanches, Panches had been expressly prohibited from working on the polling day and so the belated statement of the Respondent No. 1 on this point cannot be believed. It has been urged that in the present set up when our democracy is in infancy, special Statute should be interpreted in a manner as to fully ensure that the intention of the Legislature is faithfully carried out. Different individuals even in the village administration have been given Governmental authority and it is very necessary that such persons should not be allowed to abuse the powers which they are required to wield and so even if it be accepted for a moment that by any stretch of imagination the words used in clause (b) of explanation to S. 123(8) of the Representation of the People Act are confined strictly to Government Servants, the original restricted meaning of persons employed in the State should be deemed to have been widened and persons wielding Governmental power should be barred from exercising undue influence on voters in furtherance of the prospects of any particular candidate and under such circumstances the persons exercising powers emanating from the Government ought to be held to be barred whether they come within the purview of 'Government Servants' or not. Maxwell on Interpretation of Statutes, 9th Edition (Special Edition for India) P. 70 says that it is said to be the duty of the Judge to make such construction of a Statute as shall suppress the mischief and advance the remedy. Even where the usual meaning of the language falls short of the whole object of the Legislature, a more extended meaning is to be attributed to the words if they are fairly susceptible of it. In A.I.R., 1941, Allahabad, P. 345 (F.B., U.P. Government Vs. Lala Man Mohan Das, it has been laid down that the general word, which follows particular and specific words of the same nature as itself takes its meaning from them, and is presumed to be restricted to the same genus as those words. In other words, it is to be read as comprehending only things of the same kind as those designated by them, unless there be something to show that a wider sense was intended. But the restricted meaning, which primarily attaches to the general word in such circumstances must be rejected when there are adequate grounds to show that it has not been used in the limited order of ideas to which its predecessors belong. If it can be seen from a wider inspection of the scope of the Legislation that the general words, notwithstanding that they follow particular words, are nevertheless to be construed jointly, effect must be given to the intention of the Legislature as gathered from the larger survey. In A.I.R. 1932 Lahore P. 239 at P. 241 (Ralla Rai Wilaiti Rai Vs. Bansilal Jagarnath) Sir Shadi Lal, C.J. has observed that the doctrine of *Ejus dem generis* cannot be invoked to restrict the full and natural meaning of the phrase 'or being other invalid'. Ordinarily a general word receives its natural meaning, but a general word which follows particular and specific words of the same nature as itself, may take its meaning from them and may be presumed to be restricted to the same genus as those words. It is however clear that this rule of construction is used only for the purpose of ascertaining the intention of the Legislature, and, as observed by Maxwell in his book on the Interpretation of Statutes VII Edition at P. 288:

"The restricted meaning which primarily attaches to the general words in such circumstances is rejected when there are adequate grounds to show that it has not been used in the limited order of ideas to which its predecessor belonged. If it can be seen from the wider inspection of the scope of the legislature that general words, notwithstanding that they follow particular words, are nevertheless to be construed generally, effect must be given to the intention of the Legislature as gathered from the larger survey.

Vide also A.I.R. 1935 Allahabad, P. 444 in the matter of Income-tax of Madan Gopal in which it has been laid down that same word occurring in the same section should be given same meaning unless there is something in context to indicate a different meaning. Ordinarily where the same word occurs in two different parts in the same section the same meaning should be assigned to it, but if there is anything in the context to indicate a different meaning or principle underlying the section makes it more logical to assign a different but legitimate meaning, it is permissible to construe the same word occurring in two parts of the same section differently.

In Broom's Legal Maxims 1939 Edition at P. 452 it has been laid down that a Statute is to be construed, if possible as to give sense and meaning to every part; and maxim 'Expressio unius est Exclusio alterius' was never more applicable than when applied to the interpretation of a Statute. The sages of the law, according to Plowden have ever been guided in the construction of Statute by the intention of the Legislature, which they have always taken according to the necessity of the matter, and according to that which is consonant to reason and sound discretion.

In view of the rulings and authorities quoted above we think that the interpretation of sub-section (8) of S 123 and clause (b) of the Explanation appended thereto of the Representation of the People Act put by the petitioner is correct and there is no justification for holding that only Government servants were intended to be restricted from influencing voters by the legislature and other village Officers exercising Governmental authority were permitted to assist particular candidates at the time of the election. If the legislature had really intended to restrict only Government Servants a clear provision would have been made in the later enactment i.e., Representation of People Act 1951 that servants of autonomous bodies like the Panchayats created under the UP Panchayat Raj Act 1947 would not come within the purview of section 123(8) of the Representation of People Act, 1951.

We therefore, hold that the Respondent No 1 committed major corrupt practice within the meaning of S 123(8) of the Representation of the People Act by appointing Sarpanches and Panches of Panchayati Adalats Sabhapatis and Upsabhapatis of Gram Sabhas, Mukhias or Village Headmer and Branch Postmaster who is a Government Servant, *vide* Exs 45 and 46 (mentioned above) as his polling agents, and canvassors and we decide Issues No 3, 6, 7 and 26 against the Respondent No 1 but Issue No 9 against the petitioner.

Issue No 5—According to the petitioner Ram Shanker Sahi Tax-collector District Board, Gorakhpur, Ram Sanahi Singh, Overseer Khutaha District Board, Gorakhpur, Pahari Saran Head Master Primary School Sekhui, Moti Prasad, Teacher Bhaeri, Suraj Man Sharma Teacher Sonra, Mannu Prasad and Sarju Prasad Teachers Dheka Banspar worked for the Respondent No 1 in the last general elections. In the first place these people cannot be deemed to be Village Officers serving under the UP State Government for they are merely District Board employees and then the petitioner has not specifically mentioned where when and with whom these people canvassed or worked for the Respondent No 1 during the last general election and so we hold that the allegations of the petitioner regarding the employment of District Board employees by the Respondent No 1 for canvassing etc has not been proved. We, therefore, hold that the petitioner has failed to prove that the Respondent No 1 employed employees of the District Board as his election agents and canvassers and we decide this issue against the petitioner.

Issue No 27—We have shown above that the corrupt practice committed by the Respondent No 1 by obtaining assistance from village officers serving under the UP State and employed in this State amount to major corrupt practice under S 123(8) of the Representation of the People Act 1951. The Respondent No 1 has examined Sri Bahadur Singh Magharia, Ram Ugrah Singh, Ravinder Pratap Sahi, Chanderbhan Pande, Sarju Ram, Tirath Raj, Raghunath, Srikant Malvia Ram Sekhar Misr, Bhuneshwar Prasad, Bibhuti Dube, Srinaram, Phunna Kurmi Surajman Mohammad Nazir, Mohd Khalil, Bholai Misir, Bhulanath, Sukadeo Misir, Vidya Nivas Mangal Das Bansraj, Ram Briksh Das, Gauri Shanker Sita Ram Jagatbali Pande, Jitai, Jagdeo Misir, Jai Karan Srinam, Ram Lagan, Brij Behari Pande Rameshar Prasad, Paruman Narain, Suraj Man Sharma, Ram Chander Pande Sant Prasad, Chirkut, Gorakh Prasad, Ram Mangal, Keshav Pande Parmeshar Ram, Sambhu Prasad Pande Chotak Ram Khilawan and Sukhdeo along with others mentioned above to show that no sarpanch Panch and other village officer worked for him during the last general elections and in any case none of them worked within the knowledge or at the connivance of the Respondent No 1. Some of these witnesses are proved to have actually worked as polling agents of the Respondent No 1 and as the evidence of these witnesses is fully rebutted by the documentary evidence on the record to which reference has already been made above we think that the evidence of these witnesses cannot be accepted at its face value. The polling agents forms produced by the petitioner and the witnesses examined by him to whom reference has already been made above go to establish clearly that the Respondent No 1 has been guilty of committing major corrupt practices by knowingly obtaining assistance from Village Officers serving under the UP State Government in spite of the instructions from the High Command and the Panchayat Raj Department to the contrary and so we hold that the corrupt practices committed by the Respondent No 1 were not be of trivial nature and limited character. We therefore decide this issue against the Respondent No 1.

Issue No 8—Sri Shriban Lal Saxena petitioner has stated that the Respondent No 1 was the Chairman District Board before the actual election took place and also at the time of the last general election. The Respondent No 1 is alleged to be the Sanchalak of the Camp of Sarpanches and Secretaries and Inspectors of the Panchayats in October 1949 and certificates were issued under his signatures *vide* Ex 39. The petitioner has further stated that the Respondent No 1 abused his

position as a Chairman of the District Board and a number of Sarpanches and Panches issued printed and cyclostyled notices in favour of the Respondent No. 1 during his election campaign. Copies of some of which have been filed in this case. It was alleged in the petition that the Respondent No. 1 utilised the services of District Board teachers and he misused his authority by promoting only those teachers as head masters in July and August 1951 who agreed to work for him in the ensuing general elections. The Respondent No. 1 was further alleged to have overstaffed the schools within his constituency to enable these teachers to have free time for canvassing etc. But these allegations have not been proved by any cogent evidence and even the petitioner has not been able to give specific instances of over staffing or of the Respondent No. 1 utilising the services of District Board teachers and masters of Junior High Schools. The Respondent No. 1 has denied the allegations of the petitioner on this point and as the petitioner has failed to substantiate his allegations on this score, we decide this issue against the petitioner.

Issue No. 11.—It has been alleged in Para. 3 of the list appended to the petition (Part II) that Sarpanches, Panches, Secretaries of the Panchayati Adalats etc. as well as teachers of District Board, Primary and Junior High Schools and other District Board staff worked as canvassers of the respondent No. 1 and quite a large number of them worked as his polling agents and the respondent No. 1 over-staffed the schools and the Inspectors and Secretaries of the Panchayats were also made to canvass for the respondent No. 1 and a large number of voters for the petitioner were improperly disallowed to cast their votes as no polling agents of the petitioner could be present at different polling booths.

We have already shown above that the allegation that the respondent No. 1 over-staffed the schools or that he used the District Board staff for election purposes has not been proved and we have also held under issue No. 10 that the petitioner has failed to prove that any voters of his were not properly received and were not allowed to cast their votes for him and so the alleged minor corrupt practices have not been proved to have been committed by the respondent No. 1. We, therefore, decide this issue against the petitioner primarily because the alleged minor corrupt practices have not been proved to have been committed by respondent No. 1 and in any case they have not materially affected the result of election.

Issue No. 13.—It was urged on behalf of the petitioner that account of ballot papers was not prepared by the Presiding Officer after the close of the poll in Form No. 10 and papers relating to this election were not allowed to be inspected by the petitioner as laid down in Rule 52(2) of the Representation of the People (Conduct of Election and Election Petition Rules) 1951. Exs. 26 and 27 have been produced in this case before us but they show that these forms were duly filled in although some of the entries were left blank. It is not possible to hold simply on the basis of some entries being left blank that the accounts were not prepared at all by the Presiding Officers. As such this irregularity even if it be presumed to have taken place, cannot be deemed sufficient to vitiate the election. Similarly it has not been proved that the petitioner's case was in any way prejudicial because some papers were not shown to him, *vide* Ex. 6, at the time of inspection and as the petitioner got practically all the materials which he required for the purposes of this election petition and he has produced a volume of documentary and oral evidence in this case, we think that the election could not be deemed to be vitiated because the provisions of Rules 33 and 52 were not fully complied with. We, therefore, decide this issue against the petitioner.

Issue No. 14.—It has been alleged by the petitioner that the accounts submitted by respondent No. 1 are false and the expenditure incurred by him is much more. The respondent No. 1 is alleged to have hidden many expenses as those incurred for the printing of voters cards for the polling dates and other items of printing and publicity; those incurred on the supply of woollen blankets and uniforms to his workers and those incurred on his polling agents on the day of election.

The petitioner has stated that he had inspected the return of the election expenses filed by respondent No. 1 and the expenses incurred in supplying uniforms to volunteers and also on several notices and voters cards published by him have not been shown by him. Apart from these vague allegations on behalf of the petitioner there is no evidence to show that the return of election expenses filed by the respondent No. 1 is false in material particulars and so we decide this issue against the petitioner.

Issue No. 15.—It has been contended on behalf of the petitioner that the office of the Chairman District Board is an office of profit and so the respondent No. 1 as Chairman of the District Board was not qualified for being a candidate.

for election to the House of People on the day he filed his nomination paper. It has been urged that the Chairman of the District Board gets Rs. 250 p.m. vide the Local Government Notification No. 7297/IX-205/48, dated 29th January, 1949 and so the post of the Chairman of the District Board should be deemed to be an office of profit. This Notification lays down rules regulating the grant of T. A. to President and Members etc. of the District Board and it shows that the Board may at its expense provide a motor car for the official use of the President subject to the conditions that the cost of the car does not exceed Rs. 13000 and the President shall receive allowance of Rs. 250 in lieu of costs of petrol and mobil oil and his out of pocket expenses while on tour within the District. This Notification thus makes it clear that the President of the District Board does not receive any profit in the form of pecuniary compensation from the District Board and so it cannot be said that since he was holding on office of profit he was disqualified for election to the House of People on the day on which he filed his nomination paper. No authority has been cited before us to show that the Chairman of the District Board has anywhere been held to be disqualified from seeking election to the House of People and so we decide this issue also against the petitioner.

Issue No. 23—The petitioner has deposed that he had seen the ballot boxes before actual polling and he had sent a complaint about them to the Election Commission towards the end of October 1951 when the reply Ex. 5 was received from the Commission. This letter shows that the design of the ballot-boxes had been approved by the Commission and it was stated there that the boxes should be quite strong, fool-proof and knave proof if they had been made according to sample. The petitioner tried to demonstrate before us that the ballot boxes were defective but he could not show that if the twine of thread were to be tied tight even then the boxes could be opened. There is no evidence before us to show that the twine of the ballot boxes was not tied in a tight manner and so we think that the ballot boxes could not be deemed to be defective. There is practically no reliable evidence before us to show that the ballot boxes were not properly sealed and so we decide this issue also against the petitioner.

Issue No. 29.—In view of our findings above we hold that the respondent No. 1 has committed major corrupt practice during the course of the last general election by obtaining assistance from village Officers, serving under the U.P. State Government and so his election must be held to be void in view of the provisions of S. 123(8) of the Representation of the People Act 1951. We would, therefore, order that the election of the respondent No. 1 to the House of the People from Gorakhpur North Constituency held on 25th and 26th January 1952 be declared void.

(Sd.) BRIJ NARAIN, *Chairman*.

(Sd.) B. B. LAL, *Member*.

(Sd.) SUKHDEO PRASAD, *Member*.

BY SRI BRIJ BEHARI LAL, JUDICIAL MEMBER

With due deference to the Chairman and my colleague on the Tribunal I venture to express my opinion on a point of Law which has not been settled by any ruling of the Hon'ble Supreme Court of India. The point of law is an important one and it has come up before different Tribunals in India but has been differently answered.

Another point of law concerning the Representation of the People Act of 1951 had come up before different Tribunals and was differently answered. The point was whether a candidate who has withdrawn his candidature within the prescribed time was a duly nominated candidate at the election and whether he was a necessary party under S. 82 of the Representation of the People Act and the failure to implead such a person entailed dismissal of the petition.

This point too as said above is differently answered by different Tribunals in India. This Tribunal has held that a withdrawn candidate if not implicated could be impleaded later on by amendment of the petition and non-compliance with the provisions of Law would not be fatal. This decision finds support from the ruling of the Hon'ble Supreme Court in the case of Jagarnath Vs. Jaswant Singh and others decided on 20th January 1954 (Civil Appeal No. 100 of 1953).

The point of Law in my discussion here is whether a President or Vice-president of Gaon Sabha and Sarpanch and Panch of Panchayati Adalat established under the Panchayat Raj Act of 1947 come within the purview of S. 123 of the Representation of the People Act?

S. 123(8) of the Representation of the People Act declares major corrupt practice, the obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or by any other person with the connivance of the candidate or his agent any assistance in the furtherance of the prospects of the candidate's election from any person serving under the Government of India or the Government of any State other than the giving of vote by such person. The explanation for the purposes of this clause consists of 2 parts (A) and (b). Only part (b) which runs as follows is material for this discussion.

(b) A person serving under the Government of any State shall include a patwari, Chaukidar, Dafadar, Zaildar, Shanbagh, Karnam, Talati, Talari, Patil, village Munsif, Village Headman or any other Village officer by whatever name he is called, employed in State whether the office he holds is a whole-time office or not. All the words beginning from Patwari to Village Headman find place in the Legislation of one or other of the States in India. Patwari is a regular servant of the Government receiving a salary from the State. Chaukidars were appointed under Act XX of 1856 and were paid servants of the Government, *vide* Ss. 7 and 8 of the Act referred to above. According to Wilson Glossary 1940 Edition on page 181 Dafadar was a police officer in Bengal. Zaildar according to Wilsons Glossary on p. 896 was a village officer dealing with tenants who paid different rates of rent in money or in kind. The Punjab Land Revenue Act of 1887 (Act XVII of 1887) S. 28 in Baden Powells Land System in British India Vol. II, Ps. 107, 251 and 252 referred to Zaildars. Shanbagh according to Law Lexicon on P. 1185 means the same thing as Karnam. A Karnam is a village accountant as mentioned in Madras Hereditary Village Officers Act No. III of 1895 (The Madras Code Vol. II 1940 Edition, P. 254). Baden Powell also refers to Shanbagh and Karnam on p. 252 in his 1913 Edition of the Land Revenue and Tenure in British India. Talati and Talari are defined in S. 16, 185 of Act V of 1879 and also find a place in the land System of British India by Baden Powell, Vol. III, p. 309. Patil is evidently the same name as Patel in Bombay, Berar and Central India. Patels receive remuneration, *vide* the Government of India Gazette Ordinary, Part II, S. 3, No. 265, P. 1375 at P. 1380, para. 23. Patils or Patels are those Government servants receiving regular salary from the Government. A village Munsif is defined in the Madras Village Courts Act (Act No. I of 1889) S. 5. Village Munsif is the Judge of the Court of Village Munsif established under that Act. Village headmen are said to be paid officials in the Punjab and the Central Provinces. The term 'Village headmen' is attempted to be identified with the term 'Mukhia'. The word Mukhia is not defined in any of the Statutes to the best of my knowledge. The Code of Criminal Procedure lays some duty on a village Head-man. The District Magistrate is required to appoint one or more headmen for the purposes of S. 45 Cr. P.C. in each inhabited village in his District. A village-headman shall be appointed from among the residents of the village provided that when a suitable appointment cannot be made from the residents of each individual village, the District Magistrate may group villages for the purposes of S. 45 sub-clause (3) Cr. P. C. and appoint one village-headman for all the villages constituting the group of the circle.

The Revenue Lambardar of the village if a resident of it shall in the absence of exceptional circumstances be appointed village-headman in preference to any other person.

In appointing village-headman the District Magistrate shall have regard to character, position and influence. In districts where Maqaddams are representatives of the tenants or recognized by custom the appointment of such person to the hand-man will be appropriate whenever the land owners are not residents. A register of village-headmen in the Tahsil shall be maintained by the Tahsildar and each Police Station shall be furnished with the copies of the entries relating to villages within its jurisdiction. The matter of appointment etc. of village-headmen is laid down in the Manual of Government Orders, pages 244 to 245, Chapter III—V-Headmen, Paras. 1099, 1100, 1101, 1102 and 1103. The Magistrate was given power to remove a person appointed to be village-headman from the office of village-headman *vide* Para. 1106. Para. 1107 laid down the duties of the village-headman.

(1) Communication of the information under S. 45(1)(f) of the Cr. P. C. regarding:

- (a) the circulation of letter or notices or signals, more specially, when this enjoin or denote concerted action of any kind lawful or unlawful;
- (b) the visits itinerant lecturers and preachers;

- (c) the collection of funds for any common purposal lawful or unlawful;
- (d) the meetings of Sabhas or other similar associations; whether the object be lawful or unlawful;
- (e) the possession of unlicensed arms by persons within the villages in which they have to report the occurrence of serious crimes generally;
- (f) the passage through or assembly in the village of a body of persons associated or suspected of big association for a common illegal purpose;
- (g) the departure from his house and his destination if known of any bad character residing in the village whose movements they have been directed to report to the Officer Incharge of the Police Station within the limits of which the village is situated;
- (h) the arrival in the village of any suspicious stranger, together with such information as they can obtain regarding his antecedents and residence.

The appointment as village head-man under the Criminal Procedure Code was to prevent offences. If a village-headman happened to be as well a Revenue Lambardar of the village his position as far as serving under the State is concerned becomes different. A Lambardar was allowed a certain percentage of rent for collection of rent from the tenants and paying the land revenue to the Government. Similarly in other States Zamindar and Mukhia were appointed by the State Governments and allowed a certain percentage of collections. This was the case in Vindya Pradesh where the Zamindars and Mukhias were considered village-headman and they received 5 per cent from the Governmnet for the realization of rent in the village. Out of this 5 per cent. the Zamindar got 3 per cent. and the Mukhias 2 per cent. respectively. The Zamindars and Mukhias in that part of the country rightly were held as village officers, as was held by the Election Tribunal at Naogaon Vindhay Pradesh in Election Petition No. 255 of 1952 published in the *Gazette of India Extraordinary*, Part II, S. 3, dated December 9, 1953 on p. 3441, also dated December 5, 1953 Election Petition No. 309 of 1952 on p. 3497.

If a village headman did not combine in himself duties and emoluments of a Revenue Lambardar he should be treated in a different category, as he would not be receiving any remuneration and would be appointed to a duty for the prevention of crime. Reporting certain serious offences to the police has also been held to be the duty of every resident of the locality. This imposition of a duty would not make him a servant of the Government.

The term 'servant' in the phrase 'serving under the Government' is a key word and gives a clue to the position. In the punjab Land Revenue Act No. XVII of 1887 the term village headman has been used. Village Officer under this Act includes headman chief village-headman, patwari and Inamdar.

Thus the terms employed in the explanation to S. 123 sub-clause (8) of the Representation of the People Act find a place in one or other of the Statutes in one or other of the States in India. The representation of the People Act came into existence in 1951. The Gaon Panchayat Raj Act was enacted in 1947. If the Presidents and Vice Presidents of Gaon Sabhas and Sarpanaches and Panches of Panchayati Adalats were intended to be included in this explanation or covered by the term 'any other village officer by whatever name known', there was no reason why on express mention of these persons should not have been made.

Under the Constitution of India, Article 309, recruitment and conditions of services of persons serving the Union or a State have been laid down. This article lays down that subject to the provisions of this Constitution, acts of the appropriate Legislature may regulate the recruitment and conditions of services of persons appointed to public service and posts in connection with the affairs of the Union or of any State; provided that it shall be competent for the President or such person as he may direct in the case of service and posts in connection with the affairs of the Union and for the Governor or Raj Pramukh of a State or such person as he may direct in the case of service and posts in connection with the affair of the State to make rules regulating the recruitment and the conditions of service of persons appointed to such service and posts until provisions in that behalf is made by or under an Act of the appropriate Legislature under this Article and any rule so made shall have effect subject to provisions of any such Act. Article 310 lays down the tenure of office of persons serving

the Union or a State. Article 311 lays down provisions for dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. It is true the power of appointment includes the power of removal, but *vice versa* does not hold good.

In all questions of master and servant the direction and manner is criteria of service.

The U.P. Panchayat Raj Act created an autonomous body with rights and duties allotted by the Statute. All appointments under this Act made by the village people by election. The U.P. Panchayat Raj Act marks a new step towards Local Self Government in the U.P. Formerly there were Village Sanitation Act, Village Courts Act and Village Panchayat Act, but the appointment of the office bearers were made by Government Officers. The departure in the present Act is that there is appointment by anybody but there is election to Gaon Sabha and the Gaon Sabha elects Panches, who constitute Panchayati Adalats. The Membership of Gaon Sabha consists of the adults in the village, this Act in effect creates a village republic, independent and autonomous but State Legislature has delegated Sovereign functions of the State in a limited scope to village Panches under this Act. It is only in the exercise of those functions, administrative as well as judicial that supervision is vested in some of the Government Servants. For removal also under certain conditions the Government Servant has a hand. The clause for supervision and removal is not peculiar to the U.P. Panchayat Raj Act. It finds a place in other autonomous Legislation, namely, the Municipal Act, the District Board Act and the Universities Acts. The mere power of supervision of work and of removal of the officers elected by the public would not make those village officers Government Servants. The Government in its sovereign power also supervises the interests of labour in private concerns.

Section 28 declares that members and servants of the Panchayati Adalat and Gaon Sabhas or of a joint committee or any other committee constituted under the U.P. Panchayat Raj Act shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code. Section 21 of the Indian Penal Code lays down that the word public servants denotes a person falling under any of the description herein following, namely (1) every commissioned officer in Military, naval or air-force of India, (2) every Judge, (3) every officer of the Court of Justice whose duty it is as such Officer to investigate or report on any matter of Law or Facts, or to make authentic or to keep any document or to take charge or dispose of any property or to execute any judicial process or to administer any oath or to interpret or to preserve order in court and every person specially authorised by a Court of Justice to perform any of such duties; (4) every jury man, assessor or member of a Panch assisting a Court of Justice or a public servant, (5) every arbitrator or other person to whom any case or matter has been referred for decision or report by any Court of Justice or by any other competent public authority, (6) every person, who holds any office by virtue of which he is empowered to place or keep any person in confinement; (7) every Officer of the Government, whose duty it is as such Officer to prevent offences, to give information to bring offenders to justice or to protect the public health safety and convenience; (8) every Officer whose duty it is as such Office to take, receive, keep or expand any property on behalf of the Government or to make any survey, assessment or contract on behalf of the Government or to execute any revenue process or to investigate or to report on any matter affecting the pecuniary interest of the Government or to take, make, authenticate, or keep any document relating to the pecuniary interest of the Government or to prevent the infraction of any law for the protection of primary interest of the Government and every Officer in the service or pay of the Government or remunerated by fees or commission for performing any public duty, (9) every Officer whose duty it is as such Officer to take, receive, keep or expend any property, to make any survey, or assessment or to levy any rate or tax for any secular, common purpose of any village, town or district or to make authenticate or keep any document for the ascertaining of the rights of any public, town or district, (10) every person who holds any office by virtue of which he is empowered to prepare, publish, maintain, or revise an electoral roll or to conduct an election or part of an election.

Turning to Section 5 of the U.P. Panchayat Raj Act, we find that Gaon Sabha consists of all adults permanently residing within the area for which the Gaon Sabha is established, but no such adult shall be entitled to be or to remain a member of the Gaon Sabha if he (d) is a servant of the Crown or a Local Authority serving to, or as an Honorary Magistrate, Honorary Munsif or Honorary Assistant Collector having jurisdiction over any area of the Gaon Sabha or a part thereof.

Obviously there is a distinction between a Government Servant and a public servant. Section 5 makes it abundantly clear that no Government Servant can be a member of the Gaon Sabha even though he may be an adult permanently residing in the village. Since the U.P. Panchayat Raj Act gives executive administrative powers as well as Judicial powers, powers of looking after sanitation, canals, looking after education and other matter it was necessary to declare a member of the Panchayat or Gaon Sabha to be a public servant but not a Government servant. The numerous duties and functions and powers of a Gaon Sabha are enumerated in Section 15. Section 21 directs a Gaon Panchayat to assist any Government Servant in the performance of his duty within its area. Similarly duties and powers of Panchayati Adalats are also laid down in the Act. It is significant that all the powers acts and duties are invested in the Gaon Sabha or Panch or Panchayati Adalat collectively and not individually. The U.P. Panchayat Raj Act creates autonomous and self contained body to which all the functions of the Government in all departments have been delegated to a limited extent. Individually no member has any power except to vote.

The U.P. Panchayat Raj Act was enacted by the U.P. Legislature under proper authority and received the assent of the President. Such a legislation was within the scope of the powers of the U.P. State. Similar Legislation has been enacted in other States in India as well. This question therefore is an important one and deserves an authoritative judicial pronouncement by the Highest Court in India. The question must have come up before different Election Tribunals in India but only the Allahabad Tribunal has considered this point and decided that a Panch or a Member of the Gaon Sabha is not a Government servant and does not come within the purview of a Village Officer within the meaning of Section 123(8) Representation of the People Act, *vide* Election Petition No. 270 of 1952 (Deo Chand *vs.* Bashist Narain and others) reported in the U.P. Gazette Extra Ordinary, dated 22nd May 1953, p. 1 and p. 8.

The influence or the extent of power should not be criterion for judging this point. A professor of an University may be very popular amongst his pupil and his wishes may be respected by his pupil spread over the entire Province or a Medical Man may be very popular within the local area and his words may be literally obeyed by everybody in the area. It is neither power nor influence which mean Government Servant. The U.P. Panchayat Raj Act has created a Government of the village with all the powers of the State delegated to be exercised within the village area. It is an autonomous and independent body. The safeguard for supervision of the work has been prescribed in the Act. The freedom and purity of elections is rightly guarded by Section 123 of the Representation of the People Act. The collective power in the hands of a Gaon Sabha or a Panchayati Adalat cannot however jeopardise that freedom and equality.

The administrative side of the U.P. Government issued instructions to Panchayat Officers of the Government directing that the members of the Gaon Sabha and Panchayat Adalat should not take part in canvassing or identify themselves with the interest of any candidate. Similar instructions were also issued by the Congress Party in Uttar Pradesh. These however are not judicial pronouncements and should not carry any weight in a matter which has to be considered judicially and not from administrative point of view.

It is not necessary to look into the Dictionary for the meaning of the term 'servant' when Section 5 of the Act itself excludes Government Servants from membership of the Gaon Sabha and the Panchayati Adalat. A branch post-master comes well within the meaning of servant of the State.

With these observations I concur with the findings of the learned Chairman and my learned colleague.

The 31st March 1954.

(Sd.) B. B. LAL, Member.

ORDER

The Election of the respondent No. 1 to the House of the People from Gorakhpur North Constituency held on 25th and 28th of January 1952 is declared void as prayed by the petitioner. The respondent No. 1 will have to pay Rs. 1,450-3-0 as costs to the Petitioner. The remaining respondents will neither pay nor receive any costs.

The 31st March 1954.

(Sd.) BRIJ NARAIN, Chairman.

(Sd.) BRIJ BEHARI LAL, Member.

(Sd.) SUKHDEO PRASAD, Member.

SCHEDULE OF COSTS INCURRED

Petitioner	Amount	Respondent No. 1	Amount	Respondent No. 4	Amount
Stamp for vak- alatnama	1-0-0	Stamp for vak- alatnama	1-0-0	Stamp for vak- altnama	1-0-0
Stamp for do- cumentary evidence	91-8-0	Stamp for do- cumentary evidence	17-0-0	—	—
Service of Pro- cess	50-0-0	Service of Pro- cess	5-0-0	—	—
Diet money & T. A. of wit- nesses	76-11-0	Diet money & T.A. of wit- nesses	82-0-0	—	—
Applications and Affidavit	51-0-0	Application and Affidavit	45-0-0	—	—
Pleader's Fee	1200-0-0	Pleader's Fee	0-0-0	—	—
Total	Rs. 1450-3-0		150-0-0		1-0-0

(Sd.) BRIJ NARAIN, *Chairman.*(Sd.) BRIJ BEHARI LAL, *Member.*(Sd.) SUKHDEO PRASAD, *Member.**The 31st March 1954.*

ANNEXURE

BEFORE THE ELECTION TRIBUNAL, GORAKHPUR

PRESENT:

Sri Brij Narain—*Chairman.*

Sri Brij Behari Lal,

Sri Sukhdeo Prasad—*Members.*

IN ELECTION PETITION NO. 224 OF 1952

Sri Shibban Lal Saxena—*Petitioner**Versus*Sri Hari Shanker Prasad and others—*Respondents.*

ORDER

In this case the issue No. 1 which runs as follows was argued before us:

Issue

Is the petition bad for non-joinder of necessary parties?

Admittedly two persons Sri Parasnath Rai and Sri Thakur Das Saheny who had been nominated as candidates and who had been accepted as such by the Returning Officer but who had subsequently withdrawn their nomination within the time allowed had not been made parties to this case. Section 82 of the Representation of the People Act of 1951 (hereinafter called the Act) lays down that a petitioner shall join as respondents to his petition all the candidates who were

duly nominated at the election other than himself if he was so nominated. The discussion turns on the term 'duly nominated' and it has to be seen whether a candidate who has withdrawn his candidature is one who is duly nominated. For the petitioner it was urged that the term 'duly nominated' which is not defined in the Act, is interchangeable with the term 'validly nominated'. The expression 'duly nominated' is used in Section 36(3), 52, 53, 54(6), 82 and the proviso to sub-section (4) of Section 158. As against these under Section 38 the Returning Officer after the expiry of the period within which candidates may be allowed to withdraw, is required to prepare and publish a list of valid nominations. Section 54 sub-clause (6) lays down that in this section reference to candidates shall be construed as reference to candidates who were duly nominated and who had not withdrawn their candidature in the manner and within the time specified in sub-section (1) of Section 37. Further, in Section 52 if a candidate who has been duly nominated under this Act dies after the date fixed for the scrutiny of nominations and the report of his death is received by the Returning Officer before the commencement of the poll, the Returning Officer shall, upon being satisfied of the fact of the death of the candidate countermand the poll and report the fact to the Election Commission and also to the appropriate authority and all proceedings with reference to the election shall be commenced anew in all respects as if for a new election..... Provided further that no person who has under sub-section (1) of Section 37 given a notice of withdrawal of his candidature before the countermanding of the poll shall be ineligible for being nominated as a candidate for election after such countermanding. The expressions in Sections 52 and 54 while referring to the duly nominated candidate appear to exclude a candidate who has withdrawn his candidature from the term 'duly nominated'.

This very point has been the subject of discussion in several cases decided by the Tribunals in India under the Act as well as by the Hon'ble High Court of Bombay. In the case of *Sita Ram Hira Chand Birla vs. Yog Raj Singh Shanker Singh Parihar*, Special Civil Application No. 2017 of 1952, decided on 19th December 1952, a certified copy of which is before us, the Hon'ble Chief Justice Chagla and Justice Dixit, discussed this point in their judgment, and held that a candidate who has withdrawn is not a duly nominated candidate within the meaning of Section 82 and that by his withdrawal he relieves himself to the position of a mere elector.

The object of Section 82 is that all parties who were concerned with the actual election and who contested the election should be before the Tribunal. The Hon'ble Judges laid emphasis on the fact that Section 82 did not lay down "all the candidates who were duly nominated", but used the expression "all the candidates who were duly nominated at the election". They considered the distinction between the terms "for the election" and "at the election". The latter term qualified the duly nominated candidate in Section 82. The Hon'ble Bench of the Bombay High Court held that a candidate who had withdrawn did not come within the purview of the term "duly nominated candidate" used in Section 82 of the Act.

The Election Tribunal Madras in deciding the election petition of *Sri M. C. Lakshamana Pillai vs. Sri O. Chaingan Pillai* and others published in the *Gazette of India, (Extraordinary)* Part II, dated 12th December 1952, had a similar case before them. The discussion before them was whether a term 'duly nominated' and 'validly nominated' had the same meaning and were interchangeable. The Madras Tribunal impleaded the two candidates who had withdrawn their candidature within the time allowed by the Act. They considered it unreasonable to insist on persons who had withdrawn their candidature to the made parties to an election petition. Considering the various sections of the Act they came to the conclusion that validly nominated candidates are only those whose names were published under Section 38 while the term 'duly nominated candidate' was considered more comprehensive and included at least all those whose nominations were accepted though some of them might have subsequently withdrawn. They expressed their view that validly nominated candidates were also duly nominated but conversely it cannot be said that all duly nominated candidates were also validly nominated. The term 'validly nominated candidate' is defined in rule 2 sub-clause (f) of the Rules of 1951 made under the Representation of the People (Conduct of Election and Election Petitions) Rules. It was urged that while the rules did not explain the Act under which they were made they could be used in understanding the intention of the Legislature. It is true a definition in the rules cannot govern the interpretation of the Act but at the same time it is instructive.

The Election Tribunal, Ajmer, in the case of Lala Menghraj vs. Sri Bhiman Das and others published in the *Gazette of India (Extraordinary)* Part II, dated 24th December 1952, discussed this very point. They came to the conclusion that the defect of non-joinder of a necessary party was not fatal to the petition if the petitioner had not claimed a seat for himself.

The Election Tribunal Julandhar in the case of Prem Nath vs. Ram Kishen and others published in the *Gazette of India*, Part II, dated 19th December 1952, had a similar question before them. They found that a candidate who had withdrawn his candidature was included within the term 'duly nominated candidate' under Section 82 of the Act. This Tribunal impleaded the withdrawn candidates. They also came to the conclusion that non-joinder of a necessary party under Section 82 did not necessitate a dismissal of the petition. In the case of Pritam Singh vs. the Hon'ble Sri Charan Singh the Election Tribunal at Lucknow whose decision is published in the U.P. Gazette (Extraordinary), dated 26th December 1952, held that the withdrawn candidate was a duly nominated candidate within the meaning of Section 82 and non-joinder was fatal to the case. This Tribunal further considered the effect of Section 80 of the Act and held a petition which did not join a necessary party as not a proper petition under the Act. The Election Tribunal at Allahabad in the case Salig Ram Jaiswal vs. Shree Sheo Kumar Pande, true copy of which is on this file, were unanimous on the point that a withdrawn candidate did not come within the category of a duly nominated candidate and was not a necessary party.

The Election Tribunal at Rewa in the case of Sri Kesho Prasad vs. Sri Brij Raj Singh and others, a true copy of which is filed, came to the unanimous conclusion that the non-joinder of candidate who had withdrawn was not fatal to the maintenance of the petition. One of the Members Sri G. L. Srivastava, however, held that a withdrawn candidate was a duly nominated candidate and was a necessary party under Section 82.

Under the old election rules if a petitioner claimed a seat for himself even withdrawn candidate was a necessary party and without the presence of necessary parties a proper relief cannot be given to the petitioner and as such, in cases where all the necessary parties were not before the Tribunal the petition was dismissed. Under the present Act the relation of the joinder of parties with the relief is not maintained. It is true an election petition is not a matter of concern only for the parties but for the entire electorate and it is, therefore, necessary that all the necessary parties should be before the Court.

The question of joinder of parties is a matter of procedure. Civil Procedure Code has been made applicable under the Act under Section 90 which runs as below:

"..... Sub-clause (2) subject to the provisions of this Act and of any rules made thereunder every election petition shall be tried by the Tribunal as nearly as may be in accordance with the procedure applicable under the code of Civil Procedure 1908, to the trial of suits".

The Code of Civil Procedure is not to be followed in cases where there is an express direction in the Representation of the People Act. On points where the Act is silent the Code of Civil Procedure will apply. The Act has not provided any penalty for contravention of Section 82. Where there is an omission in the procedure a penalty of dismissal would not be justifiable.

The cases cited above are not rulings binding on this Tribunal but they are entitled to consideration. We have considered the reason in each of those cases and come to the conclusion that a withdrawn candidate comes within the meaning of a duly nominated candidate and his joining to the petition was necessary.

When there is so much divergence of opinion upon a point of law we would not blame the petitioner in not joining the candidates who had withdrawn their candidature and the omission appears to be a *bona fide* one. We have considered the relevant sections of the Act and we think it equitable to interpret the Act in the spirit which accords with the public benefit. The Election Law is a technical law but it must not be made too technical. The petitioner has made an application for joining these two persons and we would allow the application.

We would, however, keep the question of the effect of non-joinder of these two persons open as it will not be desirable to decide it till we have heard the parties who are to be joined now.

The issue is, therefore, decided accordingly.

(Sd.) BRIJ NARAIN, *Chairman.*

(Sd.) BRIJ BEHARI LAL, *Member.*

(Sd.) SUKHDEO PRASAD, *Member.*

The 21st January 1953.

[No. 19/224/52-Elec.III/17292.]

By Order,

K. S. RAJAGOPALAN, Asstt. Secy.